

1124. c. 8
Jus Regium

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O R,

The KING'S Right to grant Forfeitures, and other Revenues of the Crown, fully set forth and trac'd from the beginning.

His Majesty vindicated as to his Promise concerning his disposal of the Forfeited Estates.

The manifold Hardships of the Resumption, and the little Advantage we shall reap by it,
Plainly demonstrated.

*Nil tam proprium est Imperii quam legibus vivere.
Major hereditas venit unicuique nostrum a jure, & legibus, quam a parentibus. Cicero.*

L O N D O N,

Printed in the Year M. DCCL.

Jus Regium:

OR

The KING'S Right to grant Fines,
Tithes, and other Revenues of the
Crown, fully set forth and traced
from the beginning.

His Majesty's writs, as to his Pro-
mise concerning his disposal of the forfeited
Estate.

The manifold Harms of
and the little Advantage
Plainly demonstrated.



With a preface of Joseph Addison, Esq.
Major Secretary of State, and a preface of
John Locke, Esq. by John Locke, Esq.

L O N D O N.

Printed in the Year M.DCC.

Jus Regium :

OR,

The KING'S Right to grant Forfeitures, &c.

OF *Timoleon* the *Corinthian* we are (a) told, that when *Demenatus* a petulant and ungrateful Wretch, inveigh'd against him in the Publick Assembly at *Syracuse*, he only said, *That he had now at length obtain'd his wish, for that he had always pray'd that the People of Syracuse might be brought to such a state of Freedom, that any one might with impunity speak whatever he pleas'd of another.* This saying perhaps well enough became him, who had deliver'd his own native Country from the yoke of Tyranny, and the People of *Syracuse*, to whose Aid he was sent, from inveterate Servitude. Some of them, truly sensible of the Obligations they ow'd their Deliverer, wou'd have resented this, as the Historian tells us, they did the like treatment of another ungrateful Person, had not *Timoleon* in his great moderation prevented it. He thought it decent in him to act agreeably to his own Principles, and to take care lest by his overforwardness to punish, he might give a check to that Liberty which he made it his business to establish in the World.

There have been others who have spoken in much the same strain, and some whose moderation we have more reason to

(a) Cornel. Nep. in vita *Timoleon.*

admire, when we consider the greatness of their Power. *Augustus Caesar*, whenever any one told him that his own Person, and his Edicts were too boldly spoken of in *Rome*, used to say, That (a) in a free City the Citizens discourse ought also to be free. *Thuanus* writing to the Great Hen. IV. of France, among other Encomiums, tells (b) him, That 'twas the rare happiness of his times, that in them every one might think as he pleased, and speak what he thought.

That freedom which these great Princes pretended to allow without the least check or controule, was never indulg'd in a higher degree than here among us. An Historian (c) of our Age has given us some little Idea of our condition, when he thanks God for this great Blessing to us, that we live in a time when we may not only think or speak, but also safely write what we believe to be the truth, to which all Mankind do owe Allegiance. We may indeed speak and write what we believe to be truth, but all men will not keep within this Boundary; there are some modern Precedents, which we cannot copy after, unless we will forget more than the Allegiance which we owe to Truth.

Tho Liberty be one of the greatest Blessings Men can enjoy, yet when I consider how licentious, in some instances, it has been among us; what extravagant Sallies it has made beyond the Bounds of its own Franchises; and how injuriously and insolently free it has been with Truth, with Justice, and Majesty; in this extravagant (and I may say, too designing) exercise of it, I dare not call it a Happiness of the times wherein we live. Indeed if Men were influenc'd only by Principles of Virtue; if they embrac'd Truth in the love of it; if free from any Bias of evil Parties, or Self-interest, they aim'd at promoting Justice and the publick Good, 'twere no matter how great freedom they us'd in their Discourse and Writings. Men of such sincere and uncorrupt Affections, wou'd frequently be very useful Monitors to our Legislature; and 'twou'd be otherwise of great advantage to the Publick, that they thus us'd a freedom in representing what they thought amiss.

But a Commonwealth may be so distemper'd with evil Hu-

(a) Eoterus de Politica, l. 7. c. 8.

(b) Thuani Epist. ad Hen. 4. ante historiam.

(c) Tyrrel's General History, Introd. p. 128.

mours, it may be under the influence of untoward and dangerous Affections, that may render such a freedom altogether inconsistent with its happiness and tranquillity. It may not, perhaps, be very improper here, or foreign to the design of this Discourse, to mention some instances which have been deliver'd by others, particularly by the Author of *The Essay on Ways and Means*: When (a) a Country generally deprav'd in its manners (says he) comes to have upon the Throne a virtuous Prince, with what difficulties must he labour the publick Good, among a People fantastical, conceited, greedy, proud, designing, ambitious and mercenary! Such a King when he contemplates in his high Wisdom, all their natural and acquir'd Vices, must hardly think them worth the ruling: Such a Country may have a Hero come over to secure their Religion and Civil Rights, which were invaded, and to arm 'em against an Enemy, whose Power threatned to enslave Europe; yet he may meet with but few to imitate and assist his Virtues: and tho his ends were the same with those of Dion, who came from Athens to restore the Sicilians to their freedom; yet like Dion he may find the leading men bury'd in their Vices, fitter Instruments of a Tyranny, than for the Sway of a good Prince, not thankful for his Benefits, nor capable of Liberty.

What Country, what Prince that Author here points at, it concerns not me to enquire. In such a Country, whatever it be, where the Peoples natural and acquir'd Vices are so great, that the Prince must hardly think them worth the ruling; where he has secur'd their Religion and Civil Rights, and yet they are not thankful for his Benefits, nor capable of Liberty: There I think extravagant Liberty, especially if it shou'd make hold with that Prince himself, is not only highly dishonourable, but likewise extremely dangerous to that Country; and it must be own'd that 'tis with very great difficulties he is to labour the publick good, where they are greedy, proud, designing, ambitious, and mercenary: where there are greedy and factious Subjects ready to sell, their Prince must be hard put to it to secure the Liberties of the Country.

Quis tulerit Gracchos de seditione querentes?

(a) Vid. *Discourses on the Publick Revenues and Trade of England*. Part II. p. 310.

In another place the same Gentleman speaks (a) of abuses in National Assemblies, and their long Sessions. He tells us, That 'tis in those continu'd Sessions, where the skill is learn'd of guiding, and being guided, where the Youth is deprav'd, and elder Sinners harden'd; where those Parties are form'd, that give the cunning Speakers so much weight and value, and where they can bring their Subilty and Eloquence to market. Afterwards (b) speaking of the advantage of Eloquence in popular States, he says, That if it happen into hands not intirely virtuous, it is a Tool with which great mischief may be wrought: for thereby Sylla, Crassus, Pompey, and Cesar crept first into the Power which overthrew the Roman Liberty.

Wherever corrupt Orators grow into such an Interest and Reputation as this, the Clamours they raise in national Assemblies, the over-great Freedom of their warm and bold Speeches may be very fatal to the publick. This is easily imagin'd when we consider, that the worst Men are most forward in Factions, and the greatest Boutefeus most honour'd by their respective contending Parties.

Ἐντε διχομασίῃ καὶ ὁ πάγκρατος ἐμμορε τιμῆς.

Nothing therefore ought to be more the care of good Patriots, than to keep them as low in Reputation as they can: for (says (c) my Author) nothing can sooner hasten the ruin of a Country, than to have Men lifted high in the opinions of the People, follow'd and trusted in whom their Vices are much more prevailing than their Virtues. It must needs be so, if (as I think he wou'd be understood) that generally be true, which, in another (d) of his Discourses, he speaks of some Popular Governments, that they chose for their mutual strivings, for setting afoot Factions and dangerous Brigues, times of the profoundest peace; and at such seasons, Men grown popular by wicked arts, ambitious Pretenders, light Orators, the worst sort of Citizens had the most Sway and Authority among the People. If these Factions spring from private

(a) Discourse on the Publick Revenues and Trade of England, Part. II. p. 292.

(b) Ibid. p. 302.

(c) Ibid. p. 303.

(d) Discourse upon Grants and Resumptions, p. 14.

Interest, and (as he tells us in another place) *the desire (a) of having more, and not the fear of losing what they possess, lies at the bottom of most disaffections to Government.*

In this opinion he is not singular, for a very honourable Person (b) tells us, *That Parties in a State generally like Free-booters hang out false Colours; the pretence is Publick Good, the real Business is to catch Prizes.*

If some of these are embark'd in a Cause where their manifest Interest lies in subverting the Government under which they live; 'tis the Business of such Partizans, by fomenting Factions, by being clamorous and turbulent, and free in censuring publick Administration, to open all the avenues they can to Sedition. This is what they most aim at; and 'tis the natural effect of that liberty they take: for the Lord (c) Bacon tells us, *That Libels and licentious Discourses against the State, when they are frequent and open; and in like sort false News, often running up and down to the disadvantage of the State, and hastily embrac'd, are amongst the Signs of Troubles. Seditious Tumults, and seditious Fames, says he, differ no more than as Brother and Sister, masculine and feminine; especially if it come to that, that the best actions of a State, and the most plausible, and which ought to give the greatest contentment, are taken in ill sense and traduc'd: for that (says Tacitus) shews the envy great.* It either shews that, or gives great cause to suspect that the turbulent Mutineers in raising Clamours thus, are rather acting for pay that they have taken, than promoting the publick Good.

A Man may take a great deal of pains in looking into the Records of former times, before perhaps he may discover a more pregnant instance of the evil influence of Faction, of the unhandson and dangerous Slurs, and Impositions on the belief of men, by Pamet disingenuously spread abroad, by licentious Discourses, and false Suggestions, than what is plain and notorious in the matter of the Irish Forfeitures. A great deal of care has been taken by those Incendiaries, whose Harvest is to spring out of the Seeds of Dissension and Sedition, which they have sown among us, to make People believe that the

(a) *Discourse of Trade, Part I. p. 83.*

(b) *Ld Marquess of Hallifax his political Maxims.*

(c) *Essay of Seditions and Troubles.*

King has been injurious to his Subjects, in granting those *Forfeited Estates* to a few, which the Community had a just right to, to defray the Charge of the War; that tho the *Representatives* of the People put in their claim to them, yet he granted them away, notwithstanding his solemn Engagements to the contrary.

This persuasion has been propagated with so much success, that I may venture to call it a generally receiv'd opinion. Were it only embrac'd by those who have their Ears open to receive, and their Tongues ready and loose to echo again every thing that is spoken to the disadvantage of the Government, 'twou'd not be worth a Man's while to take any pains to undeceive them: but the opinion has spread farther, it has been receiv'd by great multitudes, who neither are poison'd by the venom of the malignant and disaffected, nor impatient of the ease and tranquillity we enjoy. I wish those Persons wou'd consider how unjust a thing it is, over-hastily to embrace, and spread abroad a Report, wherein the Fame and Interest of any private Man is concern'd; but in their easy credulity in this particular, that they do not only forget the Allegiance they owe to Truth, but are likewise very unjust to the King, and forgetful of the Regard which is due to the Injunctions of their honourable Representatives in Parliament.

The House of Commons in ordering the King's Speech on the 5th day of *January* 1690, to be printed, took a very proper course to prevent (what they might easily foresee wou'd happen from the Transactions at that time) all Reflections of this kind on his Majesty's Honour: for whosoever reads that Speech, without any prejudice or bias on his Will, must own that there is not the least ground for the malicious slander that has been rais'd of his Majesty's breaking his word; but of this in another place.

There is no readier way that designing People can take to shake the pillars of Government, than to destroy the Reverence of it: and what can do this more effectually, than by bringing the Prince under the disadvantageous Reflections of being injurious to his whole People for the sake of a few, and violating the Faith of Promises upon their account?

Those sanguine People, I know, whose natural Constitutions are such as will not easily receive the Impressions of fear or danger, will say that these are ill-grounded Suspicions,

Dreams

Dreams of the timorous and melancholy, who are too apt to be afraid where no fear is. The sober and thinking part of mankind will, I believe, be of another opinion, when they consider how possible it is, that what I here complain of may in process of time be the occasion of the worst Evils imaginable to this Kingdom. 'Twill be needless that I here explain my self: I shall only ask these two questions; First, whether it be not the Glory and Reputation of the Prince to which States owe their Alliance abroad, and the Strength and Perpetuity of those Treaties wherein their safety consists? Secondly, Whether it be not possible that a People, by their Behaviour to their Sovereign, may tempt a Foreign State (especially if another great Temptation should fall in the way) to disregard Treaties and solemn Engagements; and to take measures that have all the appearance of danger and mischief to that People? This Encouragement we may easily imagine may be taken abroad, when we consider what confidence, what spirit it has given to the Enemies of our peace at home.

'Tis notorious what liberty those People of late have taken in their Discourse, who make use of all their Rhetorick and Cunning, to reconcile others to that Interest, which can't be settled here, but with the subversion of our Religion, Laws, and Liberties. To favour their Designs, great numbers of Auxiliaries have come in from abroad: Those Popish Emis-saries I mean, who have appear'd so openly, and with such confidence in their Cause, that some of them have been taken and convicted. It must be a great Prospect that must make them so hardy, as to dare the severity of our Laws, to expose themselves to such hazards, and run the risque of being discover'd in a Country where there seems to be so little covert for them. The Case being thus in *England*, 'tis not to be wonder'd, that (as I am very well inform'd) they flock in great numbers into *Ireland*, where they are more easily shelter'd from the Rigour of the Laws in the great croud of People there, who are of the same Faith, and engag'd in the same Interest and Designs with them.

A Man may, by taking a very short view of our Affairs, easily perceive, what 'tis that has given life to a forlorn and desperate Cause; and encourag'd these People to entertain

hopes of subverting our State, which we all thought his Majesty, by a glorious and honourable Peace, had settled upon a strong and lasting Foundation. Had the Last Will of a late neighbouring *Monarch* been prior to the Insolencies I complain of, People wou'd have look'd no farther; but wou'd have call'd this alone the Sheet-Anchor of the Male contents at home, and their Allies abroad: And not without reason; for what cou'd give them more hopes than an Act, which if it take place must miserably break the Balance of *Europe*, and at one stroke undo all, that in the course of a long War we have with much Blood and Treasure atchiev'd? The Evils I now speak of had another Original, and such as might perhaps give Birth to this very Bequest.

Some honest and good Subjects, who are jealous of every thing that in the least derogates from his Majesty's Glory and Reputation abroad, think nothing had a greater part in them than the breaking of the Army after the manner that was done. So far, I confess, I must be of their opinion as to own, That 'tis possible it might have been the Cause of very fatal Resolutions in neighbouring Kingdoms, if they put the worst Construction on it, and never consider'd that the Genius of this Nation is averse to a Standing Army; that our Constitution, and one Article in our Bill of Rights is against it; and that the States of this Kingdom will spare no cost on Sea and Land-Forces, whenever there is occasion, to vindicate the King's Honour, and to act the old glorious part they have a long time had in keeping the balance of *Europe*. Had Foreign States well consider'd how honourably the States of this Kingdom acquitted themselves very lately; what vast Sums of Money they rais'd, and with what vigour they carry'd on a great and expensive War, without ever expressing their Inclinations to a Peace; they wou'd have had but little reason for making this Act for reducing the Army, an occasion of taking Measures and Resolutions, which they otherwise wou'd not have done.

But be the influence of that what it will, 'tis sure there was another plain and visible Cause, from which these misfortunes might spring: and as sure it is, that our disaffected Partizans, and the Popish Emissaries their Complices, whose Zeal for the Cause has of late been warmer than ordinary, have built their
great

great Expectations on that wound, which they themselves have made in the King's Honour. This Mr. *Charnock's* Letter in some measure shews, as far, I mean, as the Measures and Designs of a Party may be gather'd from the contrivance and reasoning of a leading Man in a Faction, in which the principal Members at least are observ'd generally to agree in their Sentiments. Whether that villanous Letter was written by the Person whose Name it bears, or by what other considerable *Russian*, who would persuade the *Assassins* of his Party to commit that horrid and execrable Treason he undertook, 'tis needless here to enquire, for that will signify nothing as to the use I here make of it. 'Tis pretended to be writ by him, after his Condemnation, to a Friend, *in confidence of his Friendship and Discretion, that he will not divulge what he writes, but in a proper season*, [That is, when their Friends, by their great diligence and assiduity, and leaving no Stone unturn'd to serve their Cause, by spreading Rumors, and raising malicious Slanders, by putting the worst interpretation on all the Actions of the King and his Ministers, by complaining loudly of the Injuries done to the Publick, and managing so as to draw crafty and ambitious Men, who love themselves, and even People of less craft, but more love for their Country, into their Party, shou'd be able to change the *Season*, and make it more favourable and proper for their Designs] *When the Minds of Men, grown more calm, should be more susceptible of Reason*, [when by managing thus, and traducing the State, they should alter the Affections of People, and not only make 'em abate of that warm Zeal with which they then supported the Government, but bring 'em to such a Temper, as to make them own that there was a good Reason for all their Calumnies ;] *and when it may be done without drawing more Persecution upon those honest Men, who lie under the jealousy and suspicion of the present Government*, [that is, when they had so far destroy'd the reverence of Government, as that Plotters, who were then under great Discouragements, might strengthen their Interest so, by running in with the clamorous and discontented, and setting up the cry with them, as to hope to carry on their traiterous Designs, without suffering for them, as they then did].

From the Author's words, as they are here deliver'd, with a Gloss not perverting the sense, it appears what he thought

a proper Season for having his Paper made publick. His best Friend (as he calls him) into whose hands he put it, to be made use of in Time and Place, according to his discretion, thought it a very favourable Opportunity, and that things were ripe enough for it, when he saw the unwearied diligence of his Party (who, I fear, had greater Incouragements than People generally imagine) succeed so far, as to have the King traduc'd publickly, for breaking his Promise, and being unjust to his People: and accordingly then we know, was the seasonable Juncture of Time and Affairs, wherein he made his execrable Treason publick; 'twas soon after the last Session of Parliament.

'Tis impossible for human Wisdom to say, how far precisely the underminers of our State may serve their Cause (or rather I should say, what Ruin they may bring on these Kingdoms) by the Advantages they have taken of his Majesty's Grants. If it be my Opinion, that 'twill be of very dangerous Consequence to our State, to let them stand as they now do, with the Wound that has been made on his Majesty (to say nothing at present, of what our Reformed Religion has suffer'd, by the unusual, and very differing treatment of Papists and Protestants) This, I hope, will be allow'd to be a sufficient Apology for this undertaking.

My design in it is, not only to wipe off those Aspersions which have been thrown on the King, and to shew that there is not the least ground, for what evil Persons have suggested, of his breaking his Promise; but likewise to make People entertain another Opinion of his Grants, than hitherto they have probably done: much care having been taken to lead Men into Error by false Reports, and few venturing on the other hand, on an attempt so invidious, as they knew 'twould be, to set this matter in a right Light.

In vindicating the King's honour, against the too open Aspersions of the worst sort of Subjects, who have labour'd to have him thought unjust to his People, and his Word, I must of necessity set forth his Majesty's Title to the Forfeitures; and the direct and natural Consequence of this will be, to remonstrate the Hardships which they all suffer, who either had Grants from his Majesty, or who purchased from them, or laid out Money on Improvements.

This,

This, I know, will be look'd upon as too bold a Remonstrance, and will, at first sight, be censur'd by more than the Disaffected (whose endeavours I wou'd willingly countermine) as an attempt that arraigns the publick Justice of the Nation. This is a piece of Arrogance which I detest. I always admir'd the Temper of *Pericles* the *Athenian*, of whom we are told, (a) that whenever he spoke publicly, he wish'd that no word might fall from him, which might grate the People, or seem repugnant to their Wills. I can't reckon that Man so well fram'd for Society as he ought to be, who knows not how to submit his private Affections to the publick Will, but inveighs against the Ordinances and Acts of the supreme Powers of the Country wherein he lives, and takes upon him to charge them with Injustice, with the same freedom that he censures the actions of private Men. To the Powers Legislative, and their Sanctions, there is sure much more respect due, than barely to abstain from speaking disrespectfully of them. But I think there is a mighty difference between reviling a Law, and representing the inconvenience of it: The former is what a good Man can't do, and there are some perhaps, who may think themselves not deserving of that name, if in some cases they left the latter undone. We of this Kingdom don't hold any Council upon Earth infallible; and we know by an Act repealed the very last Session of Parliament, that the Wisdom of this Nation, not long before, pass'd an Act which prov'd inconvenient. If this was found out by any private Persons without Doors, whose way of dealing plac'd them in the best light, to make the discovery (as perhaps it might have been) the last Resolution of our States shews, how little faulty they were, who took a liberty of representing the inconvenience of the former Act.

This is a freedom which our Legislators, the great Patrons and Asserters of Liberty, will not disallow in a free State, where even licentious Writings and Discourses have pass'd uncensur'd, and Liberty is cry'd up as the great Blessing of the

(a) Quotiescunq; verba facturus in publicum prodiret, optabat ut sibi nullum ejusmodi verbum excideret quod populum exasperare atq; irritare posset, aut quod illi contrariam esset, & cum ipsius voluntate pugnare videretur. *Ælian. de var. Hist. lib. 4. p. 96.*

Age. As for the freedom which I here contend for, if it be taken decently and modestly, it seems as little to need an Apology in this, as in any case of this Nature ; for there never cou'd be more reasons for it.

First, The Act of the States of our Kingdom, in the last Session of *Parliament*, does not only tacitly allow, but in a manner call for a representation of the Hardships of that Act, if any such may be found in it. The printed Votes tell us, that before they pass'd that Bill, whereby the Estates of great Men, and the Titles and Interests of a vast number of Protestant People were resum'd, they made a Vote against receiving any *Petitions*. This seem'd a little hard to some, who did not look into the reason of it. 'Tis true, *Magna Charta* says, *That Justice, and common Right, must not be denied to any Man, or delay'd, (a.)* We know, that the Heathen *Festus* thought it not Reason to send a Prisoner, without shewing the Causes which were laid against him ; and that *rescribere Principi*, to petition the Prince, and set forth their Grievances, was allow'd, as the natural Right of Mankind, to the Subjects of Arbitrary Princes, even where the *Lex Regia* prevail'd, and the Sovereign's Will was the Law of the Land. Can we then suppose, that the *States* of this Kingdom (which has rais'd its Glory abroad, and been hitherto establish'd by the Righteousness of its Laws) would seize Mens legal Possessions (for so I must call them) without hearing what they had to say for themselves (especially when 'tis contrary to our *Bill of Rights*) if there had not been a Reason for it ? What some imagine, that they were influenc'd by the *Irish* Commissioners, because they were known to say, before they came out of *Ireland*, that they would use all their Interest to prevent the receiving of *Petitions*, is but a very weak Conjecture. Our Legislators knew, without any Information from them, that if they receiv'd *Petitions* (which could not serve the turn of all the aggriev'd, because it was impossible to hear them all) 'twould take up the whole time of the Session. This made it necessary to them, to postpone particular Cases, and defer for a time that Justice which some thought was due to

(a) Nulli negamus aut differemus justitiam aut rectum. *Mag. Chart. c. 29.*

private Men, for fear of the Publick's suffering by it. If they made themselves masters of the Forfeitures in one Session, by resum'g them in gross, they knew that, as a Statuary by cutting off great quantities of superfluous matter, by degrees fashions his rude Marble into a beautiful Figure, a Monument which in after Ages will give Reputation to the Workman: so should they afterwards be able (when without hazard of the Bill, they could venture to descend to particulars) by cutting off from what they resum'd, to remove Grievances, and thus shape the Resumption into a more comely figure. I shall do nothing therefore unbecoming a good Subject, if I presume, that 'twas to give an Opportunity for such Amendments, that the Wisdom of this Nation would not have the last hand then put to that Affair, but left it in some Cases doubtful and imperfect, that with an explanatory Act, which should be necessary, there might be room for Justice and Mercy, which they knew were more necessary. This then being, as I imagine, no improper season for all Complainants to set forth their Grievances, and for the States of this Kingdom to consider, what they are to cut off from this first mass, to give it a just Form, or whether the matter of it is such, as can be wrought into a *Monument* that will bear being transmitted to Posterity, or no: it must be allowed to private Men to speak their Minds freely, and let in upon them all the light they can, in a matter of so great concernment to publick Reputation, and the interest of Multitudes.

Another great Reason, why a Freedom should be allow'd to give all the light that may be in this Affair, is, because 'tis in its own nature obscure, and, as yet, but very little understood. The King's Right to dispose of Lands vested in him, and the true reason of it, is a Subject which many, who have good Affections to their Countrey, and great Abilities to serve it in the most publick Capacity, have not had leasure and Opportunity to consider and understand, as they ought to do: and the learning of *Resumptions* lies so much in the dark, that very few are masters of it.

'Tis in this great obscurity that the Enemies of our State have broken in, and after they had cast the mist before the Eyes of the ignorant, ventured boldly even at the subversion
of

of our Government, by impeaching the King's Honour and Justice as they did in all places of Concourse, and destroying the publick Credit of his Ministers. 'Twas the darkness of Affairs that favour'd their seditious Designs; were it not for that, they never, I believe, would have had any cloke or colour for the Liberty they us'd. There is none but the supreme Being, whose Wisdom is infinite, who can be secure, *when Clouds and darkness are round about him, that Righteousness and Judgment shall be the Habitation of his Seat.* In matters dark and obscure, all human Wisdom is subject to error, but more especially where *the God of this World* has influence, and *blinds the Eyes of Men.*

There is yet another great Plea for the Liberty I here crave, to set forth the hardships of that Act, and represent things in their true and proper colours; and that is grounded, not only on the darkness of the things themselves, but the industry that has been us'd, and the measures that have been taken to render them more obscure, and by shameful falsehood to endeavour to impose even on our Legislators themselves. I shall not here, under this Head, take notice of the mistakes, which the Gentlemen, *constituted Commissioners for inquiring into the forfeited Estates*, were guilty of: their Oversight, which misled the Parliament, and drew them into Resentments, and a fondness for that Bill, which they could not have had, if they had seen things in their naked Truth, I shall consider in their proper place. That which I would here remark is, the dissingenuity that Gentleman was notoriously guilty of, who the last Year publish'd the *Discourse upon Grants and Resumptions*. Tho the business of the Book (as the Title Page sets forth) was to *show, how our ANCESTORS proceeded with such MINISTERS as procur'd to themselves GRANTS of the CROWN-REVENUE, and that the FORFEITED ESTATES ought to be applied towards the payment of publick Debts;* yet has he not in all that long and factious Discourse, in any one instance shewn, that our *Ancestors* pretended that 'twas against the *Law of our Land*, that any *Ministers* should have Grants of the *Crown Revenue*, or that *forfeited Estates* should be otherwise dispos'd of, than towards the payment of Debts, or any other use of the *Publick*. In the whole Work there is not one thing said relating to the Argument, that can in the least

least serve to keep that bold Discourse in Countenance, unless it be that shameful Assertion of his, *That the Grants of the Crown Land, made for these last ten Years, are void in Law.* It must be great disaffection to the present Government, that makes him pronounce so severely against his Majesty's Grants, when the reason which he gives for it (which is no reason at all) holds as strong against all the Grants that have been made above these two hundred and ninety Years. By this I find what he says in another (a) Discourse (taken notice of before) may be true, That a People may have a Hero come over to secure their Religion and Civil Rights, which were invaded, and to arm them against an Enemy, whose Power threatned to enslave Europe, yet he may meet with some not thankful for his Benefits.

His Discovery of his Majesty's Grants being void, which no Lawyer dream'd of before, was very remarkable: he found, it seems, in the Tower, where he has taken a great deal of pain in hunting for Knowledge that lies under abundance of Rubbish, a Parliament Roll, whereby he learned that 11 Hen. 4. It was plainly and directly Enacted, "That all manner of Hereditaments, which from thence forward should fall into the Crown, should not be alienated, but remain to the King (b). This Law, he says, is positive, unrepeal'd, and still in force, as much as Mag. Charta. If it be so, how comes it to pass, that no mention is made of it in any of our Books? That none of our Parliaments have ever taken notice of it, when (as I shall make appear) there have been many Acts that have mention'd the King's Grants, as settled uncontroverted Rights of the Crown. The Discoverer perhaps will say, that this was owing to the misfortune of its lying buried under rubbish in the Tower, till he found it out. But then I would ask, how it came to be buried in the rubbish there, and not found in our Statute Book among other Acts, if (as he would insinuate) 'twas made to be a perpetual Security to the Revenues of the Crown? suppose it were so, does it not lose any of its strength? is it not grown obsolete, after its lying in rubbish almost 300 Years, after that it has been implicitly repeal'd by a great number of

(a) Discourse on the publick Revenues, Part 2. p. 310.

(b) Vid. Discourse on Resumptions, pag. 303.

Acts, which have allow'd the King's *Grants*? is it still in force, as much as *Mag. Charta*, which has been confirm'd by above 40 Acts of Parliament? How comes it to pass, that in the 28th of *Hen. 6.* when (according to our Author) the first regular Resumption was, and there were so many Complaints of the Peoples great Poverty by reason of the King's Grants, that not one word was said against the King's Right of granting (which was plainly allow'd by the Act, and what the Lord Chancellor (a) *Fortescue* said) when in that complaining Parliament there must needs be several who were Members of that of *Hen. 4.* where 'tis pretended, that the King's Right of making Grants, was destroy'd by a positive and perpetual Law; when the Accession of *Hen. 6.* to the Crown (in whose time almost all the Crown Lands, which in the beginning of his Reign (b) were about a fifth part of the Lands of the Kingdom, were granted away) was not 12 years after that Law was made?

The truth of the matter is, that was never thought to be such a Law as this Author is pleas'd to make it, and that he knows very well. That Act, such a one as it is, could only respect the Circumstances of that time; and 'twas so far from tying up the hands of all succeeding Kings, that it could not bar *Hen. 4.* himself from making Grants. This is very plain from the Commons part, in the Petition to the King; for they pray, that for the future (*en temps ensuant*, which he (c), to make it a perpetual Act, renders for ever hereafter) no Grant may be made, till the King shall be out of Debt, and unless there be remaining in his Coffer sufficient for the provision of his Family. A Man who would venture his Reputation so far, as to call this an Act of Parliament as strong as *Magna Charta*, and trump it up against the King to void his Grants, must, one would think, have some other design than to serve his Country. 'Tis possible there may be nothing else in it, and that a great foreign Minister's Coach, which has been seen often at his Door, only carried its Lord with civil Visits thither; but methinks the Letter writ into *Ireland* to one of our Commissioners for enquiring into Forfeitures, does a little too plainly discover a design not easily justified, if what I am told be true, that the Letter assures that Commissioner, that this Au-

(a) Vid. *Discourse on Resumptions*, p. 259. (b) Vid. *Sir J. Fortescue's Treatise, de Domino Regali, Discourse on Resumptions*, p. 257. (c) Pag. 303, 304.

thor's Book should meet them here in the Winter. If this be not sufficient to open the Eyes of every true English Man, his Book lately publish'd must plainly shew them what this Author aims at, and in what Interest he is imbarc'd.

This perhaps may put my Reader upon reflecting a little, and considering what in reality his Services are, which he so mightily boasts of, when he (a) tells us, *That he has constantly endeavour'd to make his Studies tend to the Service of the Publick, his aim has been to incite in young Gentlemen a desire of being acquainted with the business of the Nation; and this Knowledg lying under abundance of Rubbish, his scope has been to remove this rubbish, and to dress up crabbed matters as agreeably as he can.* Is it his sense, that to endeavour to weaken his Majesty's Government, and serve a Party imbarc'd in ill Designs against the Father of the Country, is to serve the Publick? Is the business of the Nation, with which young Gentlemen should be acquainted, Faction and Mutiny against the King? To furnish Arguments and matter for this Faction; is it a meritorious work to search for Records that lie under abundance of rubbish in the Tower? would he make us believe, that to abuse such Records, to make them father a notorious Falshood, and even to destroy our Constitution, is to *dress them up agreeably* to true English palats, when 'tis only making them serve the turn of a Party?

When so much artifice has been us'd to lead Men into error, when Nations have been impos'd upon, and the reverence of the Government, in which our safety consists, has suffer'd by it; 'twill not, I hope, be taken ill, that a private Man steps in, and speaks what he thinks is truth.

A great and worthy Man (b) of our Law tells us, *That altho silentii tutum præmium, is often true in human Policy, yet there is crimen reliventia;* and he from Chrysostom observes, *That there are 3 Articles in which Men are injurious to truth. 1. In concealing the Truth out of Fear. 2. By changing Truth into a Lie. 3. By not defending it.* If it be my Opinion, that our *Commonweal* is brought into great hazard, by the Injury that has been done to it in the second Article; I thought it could be no Crime in me, to avoid being guilty of the first and last.

(a) *Discourse on Resumptions*, p. 41. (b) *Lord Chancellor Ellesmere's Speech concerning the Post-nati*, Epist. to the Reader.

Nothing but such a regard to Truth and Justice, and the apprehensions I have of ill Consequences attending the mistakes Men are led into in this matter, could make me undertake a task so invidious, as I know this will be. What sentiments I have I shall offer with great sincerity, being altogether disinterested in this Affair, and having no ingagement to sway me, but what should influence any one, who regards the Duties incumbent on him, as he is a Subject, and a Man.

'Twas a Law of *SOLON*, *That if the Commonwealth at any time should be divided into Factions, the Neuters should be noted with Infamy.* His design herein could be no other than to ingage all those who in their Tempers were virtuous, peaceable, and modest, to appear openly in the concernments of the Government, concluding assuredly, that by this means the designs of the Factionous would be disappointed, and the ruin of the Nation by the contrivance of wicked Men prevented.

This was the great motive that dispos'd me to ingage in this undertaking. Tho what I say must, I know, be ungrateful to a great many, yet I can't doubt of finding quarter in their inward Sentiments and Censures; since, as my Lord *Bacon* observes, *The Cause of Laws, and defence of the antient State, have ever found this Privilege, that such as for their own Interest disturb the same, excuse (if they honour not) their Defenders.*

The principal design of this Discourse being to rectify an Error, which, through the evil and false Suggestions of Malecontents, has too universally obtain'd, and to shew what injustice has been done the King, in the Opinion men have entertain'd of his Grants and Promise: the first thing I am to do is, to set forth the King's title to the Forfeitures, and the right which he has to make Grants of the Revenues of the Crown. If in the first place his Majesty's Title appear to be good, and this be a clear, settled, and undoubted Right in him, 'twill, I think, not only go a great way towards the refuting those Men, who derive a Right and Title to the Publick from the Claim of the Commons, which they call reasonable; but 'twill induce us likewise to interpret his Majesty's Promise (as 'tis called) more favourably; and 'twill represent to the *States*, and all the People of this Kingdom, the hardship of their Case, who are depriv'd of the legal Rights which they enjoy'd under the King's Title, whether they were Rewards for Services, or
Lands

Lands purchas'd with Money, or Leases made valuable by Improvements.

Tho by the perpetual *Common*, as well as *Statute Law* of this Kingdom, all Estates forfeited for Treason do vest in the King; tho this be as clear as the first Principles of our Law; tho it be no less manifest, that 'tis his Majesty's undoubted Right to make Grants of such Forfeitures of the Crown, yet must I ask pardon of the Gentlemen of the Law for being so absurd (for so 'twill seem to them, and to all who understand how plain our Law is in this matter) as not only to undertake the proof of settled and uncontroverted Points, but likewise to be a little longer on it, than they perhaps will think the Subject requires. There is in my Opinion a necessity for it. The Author abovemention'd (whose Book is thought to have had a very publick influence) has told the States of this Kingdom, that the King had no Right to make Grants; and others who are not ignorant of what is Law, do, without regard to our Constitution, use Arguments drawn from what they call reasonable and convenient, and would have legal Rights submit to them. To shew these Men their Errors, I shall not only prove the King's Right to Forfeitures, and to make *Grants* of Revenues of the Crown, but by tracing things up to the first source and spring, shew that this Right stands upon another Foundation than People generally imagine, such as Men, who have a just regard for our Constitution, and would give *Cæsar* his first and great due, can never consent to undermine.

To prove the King's Title to the forfeited Estates in *Ireland*, I need only take notice, that by the Act of (a) *Edward 3.* here in *England* (which by *Sir Edward Poyning's Act* is in force in *Ireland*) all those who *levy War* against our Lord the King in his *Realm*, or *adhere to his Enemies*, are guilty of *Treason*; and that of such *Treason* the *Forfeiture of the Escheats* pertains to our Lord, as well of the *Lands and Tenements* holden of others, as of himself. But tho I mention this Act, to satisfy my Readers of the most ordinary Capacity, that those Forfeitures belong to the King, yet I would not have them think, that 'tis this, or any other

(a) 25 *Edw. 3.* c. ii.

Act of Parliament, that gives him a Title to them. This Statute introduces no new Law: the short preamble to it shews that before the making of it, there were divers opinions concerning *Treasons*; therefore the Act (as the Title of it sets forth) is no more than a *Declaration what Offences shall be adjudg'd Treason*; and when it mentions that the *Forfeiture of the Escheats pertaineth to the King* (which, as to any Operation those words have, might as well be let alone) it does not by any enacting Clause create a Title, but declares or supposes a settled Right antecedent to it. 'Tis a right inherent in the *Crown*, a Prerogative of the King (and consequently (a) the common Law of this Land) prior not only to any Ordinances, and Acts of the States of this Kingdom, but, I may say, to all other his Prerogatives likewise. This will be manifest, when I come to shew that our Kings, from whom all Lands either immediately or mediately are held, did not grant away the Lands with which they infeoff'd their Subjects or Followers absolutely, but conditionally, and with a Reservation of Service and Fidelity to themselves; so that whenever the Service were deny'd, their Faith violated, and consequently the condition of the Tenure broken, the Estate shou'd return to the King the first Donor, who reserv'd the *directum Dominium*, or absolute Propriety to himself.

When by the Rebellion of a Subject his Estate returns thus to the Crown, 'tis so absolutely in the disposal of the King, that whether he may grant it to another, will no more afford matter for Controversy, than whether the King could at first grant it. The famous *Molinnus* (b) tells us, *That in France, all Estates whatsoever returning to the King by right of Confiscation, may be alien'd and granted away for ever by him, without the consent of the Parliament at Paris.* This is a settled Right wherever the feudal Constitution has obtain'd; and for very good Reason: for where Lands are granted conditionally in *fee*, and they by breach of Covenant, and dissolution of the Tenure, return

(a) Coke, *Institut.* 2. p. 496, 497.

(b) *Feuda, subfeuda & alia quæcunq; immobilia ab eodem dominio dependentia, quæ ad Regem jure confiscationis vel commissi deferuntur, possunt libere per eum alienari & in perpetuum concedi, &c. Tit. 1. de fiefs, S. 43. nu. 184. p. 1061.*

to the Donor, or him who succeeds him in his Rights and Prerogatives, he has the same Right to dispose of them, that the Lord at first had.

Upon this account it is that to grant Forfeitures, and all Escheats whatsoever, has been always allow'd to be a Prerogative of our Kings, a Right inseparable from the Crown; and as plainly deriv'd from the antient Kings of this Realm, as the Crown it self and the supreme Dominion of the Land. This is what they have always practis'd, and their right was never disputed, till the Author of the Discourse on *Resumptions* made bold to deny it.

That which he has asserted (as I observ'd before) is, that the *Grants of the Crown-Lands* made by his Majesty (a) are void in Law.

That neither this Statute nor any other Law restrains the King from making Grants either of Hereditaments that were to fall afterwards to the Crown (which are only restrain'd by that Act) or of any of its antient Revenues, will be made to appear, first from constant Usage: Secondly, from several Acts of Parliament: Thirdly, from the Resolution of our Judges, and the judgment of the Lords in Parliament.

First, Constant Usage demonstrates the King's right; and shews that the Act cou'd be of no force to bar him from making Grants of either sort. Had this been an Act of such force as is pretended, and design'd to secure all the antient demesnes, and after-Escheats, and to keep them in the Crown; we should have heard of it very early: for on both these accounts, we had great need of its assistance very soon after its birth. 'Twas but about ten years after the passing it, that Henry the Sixth came to the Crown. That Prince had in Lands, Tenements and Hereditaments, near the value of the fifth part of his Realm. The Grants made in his time were so great that, besides a vast Debt of five hundred thousand pounds on the Crown, there was not left above five thousand pounds *per annum* to support it. 'Twas this that put them upon Thoughts of a Resumption, of which I shall have occasion to speak anon. These Grants were not only of Lands that had

(a) *Discourse on Resumptions*, p. 257.

been before in the Crown, but of new Forfeitures likewise and Escheats, of which there were great plenty in this King's Reign. That he had a right to grant, and that it behov'd him thus to reward the Services of deserving Men, Sir *John (a) Forrescue*, a Man as just to the Rights of the People as the Prerogative of the Prince, does plainly tell us: and 'twill appear that this was the sense even of the Parliament of that time. What was then done so soon after making that Act, has ever since been constantly practis'd; all Hereditaments that have since fallen to the Crown, either by Forfeiture or Escheat, our Kings have always granted away as they have pleas'd: nor has their right to do it been ever any more question'd, than the very first Principles of our Law, till this Author out of a very particular respect to his present Majesty (of which he has given a very plain demonstration in his Book lately publish'd) was pleas'd to question his Title. The usage has been the same in all other Lands and Hereditaments of the Crown. To satisfy my Reader of this, I need only desire him to enquire what are become of all the Crown Lands, all the antient demesnes which are (*in libro rubro*) in the red Book. He will find that Subjects are possess'd of them all: And that the first Title was deriv'd from the King's Grants.

Secondly, The King's Right, and the nullity of the fore-mention'd Act is farther demonstrated from several Acts of Parliament. To refute that Gentleman I need only mention the *Acts of Resumption* taken notice of by himself. In the first Resumption (as he calls it) which was in the 28th of Henry the sixth, we don't find that the Commons in their part of the Act take any notice of the Act of Henry the Fourth, at the passing of which some of them must needs have been present. They don't there say, as our Author now does, that by virtue of that Act the King's Grants were void. No, but they plainly allow the contrary: for they themselves put in several *savings*. A *Saving* certainly allows a Right, for Savings of nullities wou'd be trifling and impertinent.

The same is farther demonstrated from the King's part of that Act: for he reserves to himself a Liberty to except as many as he thought fit, and accordingly does except 185.

(a) *Discourse on Resumptions*, p. 257.

Would this have been allow'd a weak Prince, as *Henry* the Sixth was, had there been any sense in these savings and reservations, if there had been an Act as much in force as *Magna Charta*, and that Act had made all such Grants actually void? Thus it was in all those Resumptions, not one of them mentions this Author's *Magna Charta*, but there are exceptions in every one of them (which shews, that the King was allow'd to have a part in those Acts) And in the last Resumption in this King's Reign (a) there is a plain reservation for his *Prerogative* in these words, *always his Prerogative reserv'd*. When the King could insert such a Clause as this, was it possible that there shou'd be any Act then in force, to prohibit his making Grants? does it not rather follow, that he by his *Prerogative* claim'd a Right to make Grants, which no Act of Parliament shou'd destroy? This seems to me, to be the sense of those Times, and of this saving for his *Prerogative*. This may be farther demonstrated from several other Acts of Parliament. In the Reign of *Henry* (b) the Eighth, an Act pass'd, which settles the Fees of the Clerk of the Signet, upon passing Grants from the Crown. In the Reign of King *Charles* (c) the Second, in the Act for laying *Impositions on Proceedings at Law*, among many others, a Rate is set for every Grant of Lands in Fee, Perpetuity, Lease for Years, and other Grants that shall pass the Great Seal of England, Seal of the Exchequer, Seal of the Dutchy or County Palatine of Lancaster; the like to which has been done 5th & 6th Gul. & Maria. These shew, that the Parliaments allow'd the King's Grants to be good. In the Reign of *Edward* the Sixth, in an Act (d) pass'd to settle Doubts concerning the Tenure of Lands holden of the King (*viz.* whether they shou'd be accounted Tenures in Capite) we find the Resolution of the States concerning all Honours, Castles, Mannors, Lands, Tenements, and other Hereditaments, which were then come to the King, or should afterwards come to him, his Heirs, or Successors, by means of Attainder, Conviction, Outlawry &c. and be holden of them. This makes it plain, that the Parliament thought of no Statute of *Henry*

(a) 33 Hen. 6. N°. 47. Vid. Discourse on Resumptions, pag. 207.

(b) 27 Hen. 8. c. 11. (c) 22 Car. 2. c. 9. (d) Anno 1^o Edw. 6. cap. 4.

the Fourth's time, then in force, which did restrain the alienation of all Hereditaments which shou'd afterwards fall to the Crown, since this Act speaks of Hereditaments which shou'd fall to the King, and afterwards be held of him. That such Grants have had the allowance of Parliaments, is farther demonstrated from two other Acts (*a*) made in the same King's Reign, to confirm the King's Patents, notwithstanding any *misnaming, misprison, or mishearsal, or any other default* (according to the forms that were in use) *contain'd in the Acts*. It had been very absurd in Parliaments, thus to make Laws, to dispense with several things requisite by common Usage to make the King's Letters available, if it had been against the Statute Law of this Land for the King to grant such Letters Patents.

It may be objected, that the Sale of the Fee-Farm Rents was by Parliament ; therefore without Concurrence or Authority of Parliament, the King cannot make Grants.

To this the Answer is very easy, that those Acts (*b*) were not of Necessity, but for security against Exceptions and Niceties on Grants, and to encourage Purchasers.

Thirdly, Besides constant usage, and the allowance of several Parliaments, the Resolutions of our Judges and Sages in the Law farther demonstrate the King's Right, and shew, that no Law restrains him from making Grants of the Revenues and Hereditaments of the Crown. 'Twould be an endless and indeed needless Labour here, to quote Authorities, of which our Books are full, to shew, that Grants made by the King, either of Escheats and Forfeitures, or any other Revenues of the Crown, are good and legal Titles, since there is not any one Book that proves such Grants to be void ; but all the Rules in Law concerning the Passing of Grants demonstrate the contrary. For proof of the matter in hand, I shall confine my self to the Judgments given in two particular Cases. The first is, the Case of a Merchant Alien, in the first Year of Queen *Mary*. The second is, the Case of the Bankers, since his Majesty's Accession to the Crown.

(*a*) Anno 1^o Edw. 6. cap. 8. Anno 7^o Edw. 6. cap. 3. (*b*) Anno 22^o Car. 2. c. 6. Anno 22^o & 23^o Car. 2. c. 24.

The first Case (as we find it in *Dyer* 92.) was thus. King *Edward* the Sixth had granted to a Merchant Alien, that he might transport or import all sorts of Merchandise, not exceeding in the Value of the Customs thereof fifty Pounds, paying only to the King, his Heirs and Successors, for the Customs of such Merchandises, no more than any *English* Merchant was to pay. This antient Custom (as it appears from my Lord *Vaughan*, 161, 162, 163. and my Lord *Coke* 4 Inst. f. 29, 30.) was given to the King by Act of Parliament, in the third of *Edward* the First; but 'twas formerly thought to be by common Law, which my Lord *Vaughan* says, in the place abovesited, was the Opinion in the times of *Henry* the Eighth, Queen *Mary*, and Queen *Elizabeth*. In the first Year of *Q. Mary*, 'twas a Question before all the Judges in the Exchequer Chamber, whether upon the Death of King *Edward* the Sixth, the Customs granted by him to that Alien Merchant were not determin'd. Their Resolution was, that the King's Patent remain'd good for the old Customs, and the reason was, because they (not knowing it seems in those times, that 'twas given by Act of Parliament) thought the King had an Inheritance by his Prerogative; for so the words of the Book are, *En que le Roy aver un inheritance, comme Prerogative annex a son corone*. From hence it appears that in the Judgment of the learned Judges of those times, a Grant made by the King of an Inheritance which he had by his Prerogative annexed to his Crown, was good. Whether their Judgment would have been the same, if they had known that Custom had been given by Act of Parliament, I leave my Reader to guess from what follows.

The second Judgment I shall take notice of, is that which was given in the Case of the Bankers, which shews us what was the Judgment, not only of all the Barons of the Exchequer, and afterwards of all the Judges in the Exchequer Chamber, but of the Lords likewise in Parliament, concerning Grants of the King, and the Power he has over the Revenue of the Crown.

The Case, as far as it concerns us to state it, was thus. King *Charles* the Second borrow'd Money of the Bankers of *London*, for the payment of which he charg'd his Excise. Since his present Majesty's Accession to the Crown, there was a Trial before the Barons of the Exchequer, for the Arrears and grow-

ing Rent claim'd by the Creditors as due, by virtue of the Patents granted by King *Charles the Second*.

The Points which came into Controversy were two; first concerning the Grants, whether they were good: Secondly, Concerning the Remedy, whether 'twas proper.

That which it concerns us here to take notice of, is their Judgment upon the King's Grants; concerning which I desire these two things may be noted.

First, That they were Grants of a Revenue given the King by Parliament, which methinks shou'd render them liable to more Exceptions than Grants of Escheats, or Crown Lands, the first tenure of which sprung from the King himself, and not from any Gift of the People.

Secondly, That they are Grants of a Revenue given the King in lieu of Purveyance, which by our Law could not be alien'd from the Crown, because 'twas for the maintenance of the King's Household.

This Consideration made a difference in the Resolutions of those learned Judges. Mr. Baron *L*—*re* own'd, that it ought to be granted, that the King has a Power over the Inheritance of the Crown in general; and he said, That if he could charge his Revenue, he might alien it: for what, said he, is the Revenue but the Profits of the same? By Profits and Emoluments a Mannor passeth. Notwithstanding he was of Opinion, That this particular Revenue is not chargeable. His Reason was, because this Revenue was given to the Crown in lieu of Purveyance; he thought the Recompense ought to be in the Crown, as the Tenure was for which 'twas given, particularly, because the Act of 12 Car. 2. cap. 24. which destroy'd the Tenures, and gave that Revenue of the Excise, in the 15th Clause enacts, that it shall be paid to the King's Majesty, his Heirs and Successors, *FOR EVER HERE AFTER*. And in the 40th Clause, That it should not be let for above the term of three Years.

The Chief Baron and the two other Barons, allow'd the King's Patents to be good; and in the Judgment given by them, several things were deliver'd, which settle the matter now in Controversy.

First, 'Twas said, that the King may alien in Fee his Crown Lands, which Baron *L*—*re* allow'd, tho he differ'd from them as to the Excise.

Secondly,

Secondly, That a County Palatine is grantable, and that the Kingdom of *Man* has been granted.

Thirdly, 'Twas said, that what the King can grant, he may also charge; for that there is no difference between the Grant and the Charge of the King.

Fourthly, That there is no difference between corporeal and incorporeal Inheritances, as appears by the Grants of Hundreds; and that the King may grant or charge any Inheritance of the Crown.

After Judgment thus given in the *Exchequer*, a Writ of Error was brought in the *Exchequer-Chamber*, and the Lord Keeper call'd to his Assistance all the Judges of *England*: and here, tho the former Judgment was revers'd, yet was not this latter Judgment grounded upon the Right of the Petitioners, but upon the Remedy taken to recover it, which was judg'd to be improper; not one of all the Judges here dissented from what the Barons of the *Exchequer* said, concerning the King's Right to make Grants of the Revenues of the Crown, but 'twas allow'd by them all.

After this, the Lords in Parliament, upon Appeal to them, allow'd the Remedy to be good, and revers'd the Judgment given in the *Exchequer Chamber*, and shew'd, that they were of the same Opinion with the Judges concerning the King's Power over his Revenue, and the uncontroverted Right he has to make Grants.

This Judgment they gave the very same Session of Parliament, that the Bill was pass'd which resum'd his present Majesty's Grants. Different Circumstances may occasion very different Judgments. We know how that Bill was left with their Lordships, at the last Conference they had with the Commons.

From what I have here shewn from constant Usage, from several Acts of Parliament, from the most solemn Resolutions of all the Judges in *Westminster-Hall*, and the Judgment of the Lords in their supreme Judicature; it appears that the King has a settled and undoubted Right to dispose of any Hereditaments of the Crown, whether they be the antient Revenues of it, or such as vest in him by Escheat or Forfeiture.

But

But if we trace things up to the Fountain, and discover the first source of this Right, we shall find that the reason of it is such, as will silence all those who argue for the reasonableness of resuming his Majesty's Grants.

There is, I think, a great difference between a Right which one has originally in himself, without any Gift or Concession of others; and that which is deriv'd from the People, and committed to him in Trust, to manage for his and their common good. The Power which the Sovereign has over the Revenues of the Crown, is of the first sort: 'Tis not of his Subjects Gift, but his own Acquisition. This is plain in our Constitution, and in all the *Gothick* Settlements in *Europe*.

For this Reason it is that our wise and just Ancestors have not only in all Ages heretofore allow'd this Right and Property vested in our Kings, but have in effect told us, that 'tis a Prerogative inherent in the Crown, a Peculiar so sacred, that it lay clear out of the reach of their Power. This is evident from their Acts of *Resumption*; the Savings in them for the King's Prerogative, are so many tacit acknowledgments of a Right in him, which they had no power to restrain.

There are other Acts which are implicit Recognitions of this sacred and inviolable Right. In the Reign of *Henry the Eighth* (*Anno* 27. c. 28.) the Act which seiz'd the lesser Monasteries, vested them in the King: under the name of lesser Monasteries, those were comprehended which were worth under two hundred Pounds *per Annum*, of these there were 376, some of which were notwithstanding worth thousands. Several of those Monasteries were founded by private Men; therefore upon the surrendry of them, Questions arose concerning the right Men had to the Lands. The Founders and Donors thought, that those Houses being dissolv'd, they had a Title to the Lands that were given by their Ancestors to those superstitious Uses, and that they ought to return to them by way of *Reverter*. Another Title was set up for the superior Lords, from whom they were held; for tho' the Founders had totally alienated those Lands from themselves and their Heirs, yet 'twas thought hard by some, that they should be wrong'd of their Escheat: but the Arguments neither for the one, nor the other, did avail. These Houses
were

were left absolutely to the disposal of the King, tho the Lands and Treasure that belong'd to them (I mean even to these lesser Monasteries) were worth more than all the King's *Irish* Grants.

But 'twill be ask'd, What can all this signify to the matter now in hand, since those Houses were dissolv'd, and the power of disposing of those Lands was given the King by Parliament? In answer to this Objection, I would ask how it came to pass, that the Parliament left those Lands to the disposal of the King? We know very well, that the Publick had occasion for such Funds in those times; and 'tis not to be question'd but there were then, as well as in other Ages, Patriots who prefer'd the good of the Publick, before gratifying the cravings of hungry Courtiers. The truth of the matter was, they thought they of Right belong'd to the King; and the States of our Kingdom in those Ages of the World were of Opinion, that to give *Cæsar* his due, and to keep to the Constitution, was not at all inconsistent with that Justice and regard they ow'd their Country. By the *Roman* Law, or at least by a Judgment of the Senat in *Theodosius* his time, the Endowments of the Heathenish Temples were (upon a full Debate, whether they should return to the right Heirs, or be confiscated?) in the end adjudg'd to the Emperor's Exchequer. And here in *England* the Founders having alienated the Lands from themselves and their Heirs, and the superior Lords being allow'd no Right of Escheat, they were allow'd to be in the disposal of the King, to whom by our Constitution all Lands and Treasure that have no Owner, do belong.

But 'twill still be urged, that 'twas by virtue of the power given him by Parliament, that he granted them away. 'Tis true indeed, the Act of Parliament did empower the King to grant and dispose of them at his Will and Pleasure: but it does not at all follow from hence, that he would not have done so without any such Power given him by the Act. The Act of the same King (31 H. 8. c. 13.) which destroy'd the greater Monasteries, had no words of disposal in it, and yet those Estates were granted by the King, and they have hitherto stood as strong as any of the others. Tho we have had no Resumption since that time, yet we have had frequent Parliaments. If it

it be said, that most of these greater Monasteries were of Royal Foundation; and therefore, as the learned Bishop of *Sarum* (a) tells us, must have come to the Crown without dispute: this shews us, what regard the States of our Kingdom had to our Constitution in those days, when, besides the Revenue and Wealth of the lesser Houses, they submitted to that Right which the King had to dispose of the vast Treasure and Lands which belong'd to those greater Monasteries, which were 264 in number.

But besides this it appears, That antecedently to the Act of Parliament the King was allow'd to have a right to dispose of the Lands even of those lesser Houses: for as the greatest number of them were resign'd to the King before there was any Act of Parliament made for their suppression, as the aforementioned learned Author tells us (b), so did the King exercise his Power of granting without any Authority of Parliament. Thus for example, the Priory of *Christ-Church* near *Aldgate* in *London*, was granted to Sir *Thomas Audley* Lord Chancellor, at least three Years before the passing of that Act (c). For the same reason it was, that the Statute of *Absentees* (*Anno 28. Hen. 8. c. 3.*) in *Ireland*, by which some great Men were depriv'd of their Estates, gave them to the King his Heirs and Successors; they knew they were Grants of the Crown originally, therefore left them to the King, in whom they naturally and of course vested, as soon as the Subjects Inheritance was determin'd. Tho the Estates of those Absentees were very large, and that of the Earl of *Shrewsbury* alone (consisting of three entire Counties, all but one Mannor) would make a larger Territory than all the Lands which his Majesty granted away in *Ireland*; yet had they no thoughts then of seizing that Right which belong'd to the King. Our Constitution was in those days better temper'd, than to suffer any such Breach upon the Prerogative.

These Concessions of the States of the Kingdom, and the Power which our Kings have always us'd over the Revenues of the Crown do, methinks, argue a Prerogative which could

(a) *Hist. of the Reformation*, Part 1. pag. 262. (b) *Hist. Reformat.* Part 1. p. 237. (c) *Ibid.* Pag. 190, 191.

not be given, and therefore, whilst our Constitution stands, cannot so reasonably be taken from him.

But the reason of this will be more manifest, if we enquire into the original Settlement and disposal of Estates.

In this Enquiry we shall discover, first, from what Writers tell us concerning the distribution of our Lands; Secondly, from the nature of Estates distributed, and the Conditions on which they were given; that the Lands were granted originally by our Kings, and that this is the foundation of that Right and Property which all former Ages have allow'd them in those Lands.

As to the first, if we trace things as high as the first Gothick Settlements in this Kingdom (for how much soever a larger prospect into darker and remoter times may make for us, we shall not reckon it needful to look farther) we shall find from the general consent of Writers, that all Estates in this Kingdom had their foundation and origin from the Grants of our Kings. And in *Ireland* 'tis certain, that all Estates since the Settlement of the *English* Government in that Kingdom, arose from the same Title.

This is beyond all doubt our Constitution: If it concern'd us to enquire how it came to be so, it might perhaps not be improper to shew, that Lands were thus distributed by the Gothick Princes, wherever they made themselves masters of the Countries they entred into. Such a Relation might help to demonstrate the truth of the Account which is given us of their Settlement here; and the rather, if what some People tell us be true, that the several Nations sprung from the same Soil, and that their original Constitutions, as to the Tenures and Settlements of Land, and fundamentals of Government, were the same. A great Man of our own (a) Country tells us, *That there don't want traces of this from the very Institutions of Odin, who was the first great Leader of the Asiatick Goths or Getæ into Europe, and the Founder of that mighty Kingdom round the Baltick Sea, from whence all the Gothick Governments in these Northern parts of the World are deriv'd.*

From this mighty Kingdom of *Scanzia* (for there it was that

(a) *Sir Will. Temple's Introduction*, p. 156.

they first seated themselves) issued not only the *Visigoths*, who under divers Names at several times invaded our Land, were victorious in *Gaul*, and form'd a great Dominion in *Spain*; but the *Ostrogoths* likewise, who acquir'd great Territories, and made themselves masters of *Italy* (a). These People (in the stile of another learned Man) overrun many Countries, yea almost the whole *Roman Empire*, under divers Names of *GOTHS*, *HUNNS*, *VANDALS*, *SLAVES*, *LOMBARDS*, &c. and since that time have conquer'd other Countries, under other Names of *SAXONS*, *DANES*, *NORMANS*, &c. (b). Of these People in general, we are told, That their Princes or Leaders of their several Nations, became *KINGS* or Kings of the Territories they had reduc'd. They reserv'd part of the Land to themselves for their Revenue, and granted the rest among their chief Commanders by great Divisions, and among their Souldiers by smaller shares. The first who had the great Divisions were called *Earls*, or *Barons*, those of the smaller were *Knights*, and the smallest of all, *Freemen*, who possess'd some portions of free Lands (c).

This was the general Method wherever those Northern Expeditions had success. When the Country was subdu'd, the Acquisitions belong'd to the Prince, and he always distributed and granted the Lands as he pleas'd.

Thus *Molinæus* tells us, that when the *Franks* had subdued the *Gauls*, and *Pharamond* settled himself in that Dominion in the Year of *Christ* 420 (which according to some Computations, was but (d) eight Years before *Hengist* and *Horsa*, of the *Scandinavian Race*, came into *Britain*) the conquer'd Lands were distributed in *Fee* among the People; and that which was requir'd of the infeoff'd, was an *Oath of Fidelity*, and certain military Services, in proportion to the income of the *FEE*, and some Acknowledgments upon renewal of Investiture, and change of Tenent (e).

(a) *Grotii Prolegom. in Hist. Goth. Vand. &c.* (b) *Dr. Brady's Compleat History*, p. 94. (c) *Sir William Temple's Introduction*, pag. 65. (d) Whereas the generality of Writers make the *Saxons*, *Angles*, and others, to have come hither in the Year 449, *Mrs. Selden* (*Jur. Anglor. facies nova*) following *Camden*, places it in the Year 428. (e) *Ad onus recognitionis juramenti fidelitatis & certorum onerum militarium, pro modo reddituum feudi, & ad onus renovationis investiturae, &c.*

This is a remarkable and early account of the *feudal* Settlement: For the *Franks* were some of the first who in the Declension of the Roman Empire, rais'd Commotions, and made Excursions into its Territories. And 'tis the more worthy our Observation, since we are told (a) that these *FRANKS* were a People of *Scanzia*, which (as *Pliny* calls the North) was *Officina Gentium*, or (in the Phrase of some learned Men among us) the great *Hive*, from whence those swarms came which overrun a great part of *Europe*, and particularly acquir'd a Dominion several times over us.

That the Lands acquir'd by the several People who sprung from the Soil of *Scandinavia*, were dispos'd of by the Princes, and that the principal Officers and chief *Captains* became, by virtue of their *Tenures*, his hereditary and standing Council, the Author of the *Discourse on Resurrections* is pleas'd to tell us.

This account of this first Settlement is what is every where deliver'd. *Bodin* tells us that the *Hunns* (a People of the same Race) who ravag'd with Fire and Sword through *Europe*, gave the *Lombards*, the *Almains*, and *Franks*, such a Custom of seizing the Dominion of all things, that no one possess'd a foot of Lands, nisi eorum beneficio, but by grant from them (b). This is another *Gothick* and *Feudal* Constitution: for the Lands which were antiently seiz'd by those Conquerors, and when given away were called *BENEFICIA*, were the same with the *Feuda* or *FEEs*, as they were called afterwards.

To shew this a little more clearly, 'twill be convenient to deliver here what we are told of these *Lombards*; to wit, That they coming out of *Germany*, particularly that part of it which is called *Saxony*, and possessing *Italy*, brought with them out of their own Country both the *Feuds* and the Customs of the *Feuds*, and in that part of *Italy* where they fixed their Seats, and from them was called *Lombardy*, us'd them as formerly they did in their own Country; and that others approving, followed those Customs (c).

(a) Ibid. (b) Ad dominatum rerum omnium occupandum sic assuescerunt, ut nemo terræ glebam nisi eorum beneficio possideret. *Bodin. de Republi. lib. 2. c. 2. p. 191.* (c) This account is given by *Herman. Vulceius, de Feud. pag. 11.* where he quotes many others.

This account of the *Lombards* and their early feudal Settlement, must go a great way towards inferring the same Settlement in the first Saxon Government (for since the Norman Conquest there is no doubt) among us; since we are told that they carry'd those Customs out of *Saxony*: nor does *Grotius* weaken the reason of this inference, when he tells us that the *Lombards* sprung from the *Gepide* who originally came from *Scanzia* (a); since the *Saxons* (as Learned men tell us) were of the same Race and Soil with the *Scandinavians* (b).

But to carry this Proof a little farther. *Bodin* in the place above-mention'd tells us, That the other Nations from the North, among whom he reckons our *Saxons* and *Angles*, when they had learned *Hannorum mores ac dominandi illecebras*, the Customs of the *Hanns*, and the Pleasures of Dominion, rendering themselves masters of all, took to themselves the most fertile Land, and gave the usufructus of the rest to the old Inhabitants, under the assurance of their Fidelity (c).

The account that our Historians give us of the Severities of *Hengist* and *Horfa* against the *Britains*, to whose assistance they were call'd in by *Vortigern*, makes a very dismal and tragical History.

The *Britains* being reduc'd to the most miserable Extremities, 'tis easy to imagin that their Enemies call'd themselves Masters of their Lands, and dispos'd of 'em after the manner *Bodin* mentions.

'Tis plain from the general Testimony of Writers, that 'twas so. *Mr. Bacon*, who was not too violent a Stickler for the Prerogative, tells us of those first People that came in hither, That when they swarm'd from their Hives in foreign Parts, they came in a warlike manner under one Conductor, whom they call'd a King (d). In another place he says that the Power of

(a) *Grot. Prolegom. in hist. Goth. &c.* (b) *Sheringham Discept. de origine Gentis Anglor. tells us, That from the antient Scanzians were deriv'd the Jules, Gules or Getes, who nested in part of Germany; and were afterwards call'd Saxons. The Learned Bishop Usher, Antiquit. Eccles. Brit. says, p. 214, 215. That Hengist and Horfa, the first reputed Saxons, with their Forces came from the Danish Friezland, and others after them from Jutland. Here Ptolomy and Marcianus place the Saxons, according to Selden, Mare claus. l. 2. c. 6.* (c) *Se rerum omnium dominos ferentes, fertilissima quaque pradia sibi reservarunt, cetera fiducia nomine veteribus colonis fructu da reliquerunt.* (d) *Historical Discourse of the Uniformity of the Government of England, pag. 202.*

the Saxon Kings was double, one as a Captain, the other as a King: As Captain their Power was to lead the Army, punish according to demerits and according to Laws, and reward according to discretion. And after their coming into Britain he says, the Lands were distributed by them (a). This the *Mirror of Justices*, a Book of great Antiquity, and approv'd Authority, makes very clear to us in the Chapter concerning the *Constitutions made by the antient Kings*, where he tells us that in King Alfred's time one of the things assented to was, "That these things following should belong to the Kings, and to the Rights of the Crown: The soveraign Jurisdiction throughout the whole Land unto the middest of the Sea encompassing the whole Realm; as Franchises, Treasure found in the Land, Waife, Estiny, Goods of Felons and Fugitives which should remain out of any ones Rights, Counties, Honours, Hundreds, Wards, Goals, Forests, chief Cities, the chief parts of the Sea, the great Mannours; these Rights the *FIRST KINGS* held, and OF THE RESIDUE OF THE LANDS THEY DID INFEOFFE THE EARLS, BARONS, KNIGHTS, SERJEANTS, AND OTHERS, TO HOLD OF THE KINGS BY THE SERVICES PROVIDED, and ordained for the defence of the Realm, according to the Articles of *THE ANTIEN T KINGS* (b).

Here we have an exact account of the Original of Estates, and do learn that they are deriv'd from the Gift of the Kings of this Land. If it be ask'd whom did Alfred mean by the first Kings, we may be assur'd that he look'd as high as the entrance of the first Saxons into this Kingdom.

That they seized and distributed Estates according to their pleasure, as the Danish Conquerors here, and the Norman did afterwards, would be manifest, tho this Ordinance in King Alfred's time had not plainly told us so. Hengist and Horsa were of the Race of Odin; and the People who came under their command, as they were of the same Scanzian or Gothick Stock with those Nations which formed great Kingdoms and Feudal Constitutions in Lombardy, France, and the other parts of Europe, so did they issue from the same Soil with those Danes,

a) Ibid. p. 50, 51. (b) *Mirror of Justices*, c. 1. §. 3.

who above 400 years after, and with the *Normans*, who near 200 years after them brought their victorious Arms into this Country. As therefore the *Norman Conqueror* challeng'd the Property, and disposed of the Lands of this Kingdom (which is so evident that I shall not here trouble my Reader with the proof of it) and as the other Nations of the *Scandinavian Race* in the Age of our first Conquerors, and afterwards laid the Pattern which the *Norman* follow'd, so we must reckon *Hengist* and *Horsa* did; and that they all copy'd after *Odin* their first Leader.

Secondly, The nature of Estates, and the conditions of their Tenure do plainly shew, that they were given originally by the Kings; and that this is the Foundation of that unalterable Right and Property which former Ages have allow'd them in those Lands.

This is manifest in our Tenures, and 'tis plain in all the Kingdoms where the *Gothick Nations* settled, and introduc'd their feudal Constitution. The Prince is every where Lord of the Fee, and has the *supreme and direct Dominion* of it. The Subject has but the *use, and but a shew of the Dominion* (a). This is what the whole crowd of Feudal Writers tell us. We don't say, says *Duarenus*, that the Dominion is transferred on the *Feudatory*; he has the ground given him only to reap the fruit of it (b).

This is all that can be given in a Fee; for what the Learned *Molineus* asserts; That the *direct Dominion cannot be alienated, abdicated or prescribed* (c), is the Doctrine of all the feudal Lawyers. This must always remain to the Donor, and hence it is that the Learned *Cujacius* distinguishes between the Fee, and the immovable thing which is the subject matter of the Fee (d).

(a) *usufructus, & quasi dominium.* Arn. Corvin. de jure feud. p. 123.

(b) *Non dicitur dominium transferri in beneficiarium, sed tantum datur usufructus, & usus.* Duaren. c. 2. §. 2.

(c) *Cum directum illud Dominium in quo Rex Franciæ est fundatus in toto Regno, etiam in temporalitate Ecclesiarum, secund. Panormitan. in c. veniens. colum. 1. de accu. sit. de juribus coronæ, sequitur. quod non potest alienari, abdicari, nec prescribi.* Moyn. Tit. de fiefs. §. 51. nu. 99. p. 1170.

(d) *Feudum non est res ipsa immobilis quæ in feudum datur: res est materia feudi: multum autem interest materiam feudi & feudum.* Cujac. in d. c. 1. — Vult eius, p. 20.

This then being the nature of a Subject's Estate, since as our Countryman Mr. Somner tells us, the Land is only *partially, conditionally, not totally and absolutely granted* (a); since the *entire Dominium* (as Lawyers term it) is only transfer'd, and the Propriety abides still in the King; it is manifest what Estates Subjects have, and whence originally deriv'd.

The Services annex'd to them, and the Conditions under which they were first granted, and are still held in all Countries where the Gothic Government has been settled are a farther Proof of this. The word *Feudum* or *Fee*, which is the name of all Estates given by the Princes of Gothic Race, in its known Signification denotes a conditional Estate, such as is held by Service and Fealty. So much we are taught even from the definition of the Word, as we find it deliver'd by men learned in the Laws of the Franks (b). They tell us that *Fee* has its name from Fealty (c): That this alone constitutes the *Fee*, and denotes the very form and substance of it (d): That the King can't abdicate Fidelity and the direct Dominion of the Estate (e): That this is so essential to the *Fee*, that no Covenant can be made against the performance of it (f): That tho' Money be paid for the Land, yet this will be nevertheless due (g): That tho' the Oath be paid, yet this must go always

(a) *Treatise of Gavelland*, 1p1906.

(b) *Feudum est usufructus, quidam rei immobilis sub conditione fidelitatis*. Vulteijs de Feudis, l. 1. c. 2. §. 9. — Est ius praeiudicium alieno utendi, fruendi, quod pro beneficio Dominus ea lege dat, ut qui accipit sibi fidem & militiae minus, aliudve servitium exhibeat. Cujac. in princ. comm. feud. — (c) *Feudum a fidelitate dictum est*. Duaren. in consuetud. feudor. c. 2. §. 3. Herman. Vult. p. 108.

(d) *Fides sola est quae feudum inesse deducit*. Vulteijs p. 25. *Feudi proprium, seu specifica differentia est fidelitas*. Molin. Tom. 1. f. 1326. nu. 13.

(e) *Fidelitatem & directum dominium Rex remittere & abdicare non potest, quia ista esset expropriatio, quae non potest fieri a supremo Principe*. Bald. in praeiud. feudorum colum. 8. vertic. expedita. Molin. Tom. 1. p. 1179. nu. 99.

(f) *Ut fides non praestetur conveniri nullo modo potest*. Duaren. in consuetud. feudor. c. 2. §. 3. F. D. 88. l. 1. §. 1.

(g) *Debitur fides & obsequium etiam si pecunia intervenierit, tanquam merces*. Duaren. in consuetud. feudor. c. 2. §. 5.

with the Fee (a): That the failing in this Service is the loss of Fee (b).

As England was several times overrun by the same race of People which founded the Gothick Government in Europe, so are our Estates of the same nature and condition with theirs.

No Man (says our learned Countryman Sir Thomas Smith) holdeth Land simply free in England, but he or she that holdeth the Crown of England. All free Land in England is holden in feodo, which is as much as to say in FIDE, or FIDUCIA, that is in trust and confidence that he shall be true to the Lord of whom he holds it, and pay such rent, do such Service, and observe such conditions as were annex'd to the first Donation. Thus none but the Princes are veri Domini, but rather fiduciarii Domini, and Possessores.

This, says he, is a more likely Interpretation than that of Littleton, who saith that feodum est idem quod hæreditas, Fee is the same with Inheritance, which it doth betoken in no Language. This happeneth many times to Men of great Parts and Learning, yet not skill'd in many Tongues, or mark not the deduction of words, which time doth alter (c). Thus far that learned Man.

If by Inheritance Littleton means a perpetual Estate, such as will descend to the Heirs, whilst they continue and perform the Duties annex'd to it, his manner of speaking may be born as things stood in his time, and do now in the feudal World. For since Feuds which at first were given only during pleasure (which shews that they were purely of the Gift of the Prince) afterwards for a year, then for life, then to the Feudatary and his Sons, have for some ages been allow'd to pass in inheritance (d); this name, which in the younger days of the Feuds wou'd have been a Solecism, and is still quarrel'd at by some nice Feudists, may pass among us.

(a) Licet non exprimat (nempe fidelitas) tamen tacite in verbo præstationis semper intelligitur, & domini superioris personæ adhæret: quod opponitur, quod pactum feudi interponi potest, ut sine sacramento fidelitatis vassallus feudum habeat, de sacramento solo seu juramento intelligunt omnes. Craig. de jure feud. pag. 47.

(b) Hot. de Feud. Disp. 38. Col. 886. D, E, &c.

(c) Sir Thomas Smith's Commonwealth of England, lib. 3. c. 10.

(d) Vid. hæc omnia apud Craig de jure feud. pag. 20, 21, 22.

But

But if he mean an absolute Estate, 'tis what the word will not bear. *Feodum simplex*, *Fee simple*, he says, is as much as to say, lawful and pure Inheritance. And my Lord Coke's Comment on *Simplex* is, That the Fee is descendible to his Heirs generally, that is, simply, without restraint to the Heirs of his Body, or the like (a). The Feudists give us quite another account of a *Fee Simple*. They tell us that 'tis that Fee for which when a man swears fealty, his Oath runs with a saving to that Fidelity which he owes to another: That is, 'tis a Fee not holden immediately from the King, but from some other common person. And 'tis call'd so to distinguish it from *feodum ligium*, *Liege Fee*, for which he that is infeoff'd swears without any exception or saving in his Oath (b): That is, he holds it immediately from the King, and does fealty to him alone. So that in strict speaking according to the feudal Writers, to call an Estate held from the King *Feodum simplex*, or *Fee simple*, is as improper as to call an Estate which is in the hands of the King a *Feodum* or *Fee*; and yet we find the first frequently done in our Books, and the latter in Acts of Parliament. But this must be allow'd when men great and eminent in their Professions alter the signification of terms.

Now *Feodum* 'tis certain is a deriv'd Right, and founded in him who hath the supreme Dominion, in consideration whereof all Lands held by Subjects are burdened with Services. This is as evident from the Fealty, Services and Tenures in use among us in the times of our first Saxon Kings, as from the state of things since the entrance of the Normans. In the first distribution of Lands, Duties and Services were annex'd to them, which have held to this day, and must continue for ever. In respect of them what the Feudists say is true: *Origo feudi semper inspicienda est usq; in infinitum* (c); The original Settlement of the Fee is for ever to be regarded. Tho the burdensom Services are taken away, yet the Lands still

(a) Coke 1st Part, f. 1. A, B.

(b) Quid sit homo ligius quaritur, & quid feodum ligium, docet glossa in c. d. & Specul. in Tit. de feudis. Estq; videlicet cum quis fidelitate alterius astringitur, nullius fidelitate excepta. Si quis, etenim jurat fidelitatem alicui excepto alio, feodum hoc simplex est, non ligium. Duaren. in Conf. feud. l. 4. §. 2.

(c) Duaren. in Consuetud. Feud. c. 13. §. 6.

remain holden : the Lord or King himself cannot (as I have shewn) remit fealty, nor part with the Property and direct Dominion of the Land. And so it is that my Lord Coke tells us, That all Lands and Tenements in *England* in the hands of Subjects are holden mediately or immediately of the King, and that we have not in the Law of *England* properly *Allodium*.

'Tis sure that where the Property of all Lands belongs to the King, and the Subjects owe Services for that *utile dominium* which they have, they can't be said to hold their Estates freely, as they say the Prince of *Hainault* does, from God and the Sun.

If what has been said proves the King's Right to grant Forfeitures and other Revenues of the Crown, it may give occasion to consider the hardships which his Majesty's Grantees, Purchasers, and Improvers do suffer in being depriv'd of Legal Titles.

This hardship may be thought the greater, since it appears that this is a Right belonging originally to the King himself, not deriv'd from any Gift of the People. Curious and nice men, who look nearly into things, and are for preserving the old Land-mark, and keeping scrupulously within the exact Boundaries of our Constitution, reckon this an Argument to prove the King's Right sacred and inviolable. This indeed must be allow'd in favour of their Sentiments, that it seems to be the opinion of all former Ages. Many great Sages and Interpreters of our Law tell us, that there are some Prerogatives of the Crown, which cannot be taken away by any Law. There is no Prerogative that has so just a claim to this Privilege as that of the King to reward the Services of his Subjects with Grants of Forfeitures to the Crown. This is a Power which he has over his own Estate; and an attempt to do that which destroys this Right, destroys Property, the greatest and (I had almost said) in strict speaking, the only Property in this Land.

The Complaints which some men, zealous for our Constitution and the Antient Rights of the Crown, utter upon this occasion, will, I know, seem unreasonable to those who distinguish between an Act that destroys a Prerogative absolutely, and that which in a single instance seizeth the Rights of the Prerogative for the use of the Publick. This distinction,

on, however material it be, yet will have but little weight with men of one way of reasoning, those I mean who can be more easily reconcil'd to an Act, which, without touching any man's present Right, should debar our Kings from making Grants for the future, than to one that should deprive People of legal Rights by resuming the Prince's Grants. An Act of the latter kind would be manifestly inconvenient to those who were hurt by it: If the former should in future Ages happen to be so, by the King's wanting the necessary Materials for governing well, and rewarding the good Services of his Subjects, he would find some among the greatest men of the Law, who reckon themselves oblig'd not to assent to any thing that may tend to the prejudice of the King, or Dishonour of his Crown, to help him out of the inconvenience, by trumping up the Rights of his Prerogative, by telling him that the Act of one King cannot deprive his Successors of the ancient Prerogatives of the Crown, and that the concurrence of the other States of the Kingdom can't give sufficient Force to such an Act, because it can't be imagin'd how in reason they who hold their Estates only upon condition from the King, should have a Power to take away that Right which belongs to him who founded those Estates. There would, I say, be found men who would reason thus; and to back their Reason with Authority, they would tell him that other Kings, particularly his Ancestors the Kings of *Scotland*, notwithstanding Acts of Parliament to prohibit them, insisted upon their Right, and granted away the Revenues of the Crown.

But allowing that this Act destroys not the Prerogative absolutely, because it looks not beyond the present, and perhaps may never be drawn into example hereafter; yet does it not afford matter of objection to those who know that it destroys his present Majesty's Right?

The common Answer is, That there is no room for this Objection, because the King consented to the Act, and *Volenti non fit Injuria*. 'Tis true, a man can't justly complain of Hardship, when he himself has consented to it, when 'tis his own voluntary Act: But then it ought to be truly voluntary, it ought to be free, and under no pressures of necessity. It often happens that when two things are propos'd, one of them has the preference and determination of the Will. which yet

is very inconvenient, and would not be chosen, if the Will were free, and not constrained to chuse it to avoid the harsher part of the Dilemma. There was a time when the King was inclin'd to give up his Right, and gratify the Publick with a good part of those forfeited Estates, when in Parliament he declared his intention to do so: But afterwards, when his Majesty, discovering by the fate of three Bills (two of which were lost in the Upper, and one in the Lower House) that it seem'd not expedient to the Parliament to divest the Crown of its Right, and dispose of those Estates for the use of the Publick, granted them away; when he saw likewise that they were gone farther than his Grantees, and were become the Properties of great numbers of his loyal Subjects, who in Purchases and Improvements laid out great Sums of Money upon them; 'tis not to be imagin'd that the Resumption could be very agreeable to his Inclinations. Besides the consequence of the Act at home, he could not but see that 'twould create some concern to his Friends, and not a little rejoycing to his Enemies abroad.

But suppose what some say be true, that the Act can be no hardship to the King because of his Consent, yet dos it not bear too hard upon his Majesty's Grantees, Purchasers, and the vast number of Protestant Tenents and Improvers, since they were all legally seized of their Lands and Tenements, and their Title was that by which all the Estates of these Kingdoms are held?

The Answer which some give is a very ready and easy one: They say they were *disseized* by Act of Parliament, that what they do is our Act, because they are our Representatives; that since we have given up all our Right to them, we must without repining be concluded by what they do.

'Tis hard to say what Parliaments cannot do: The Boundaries of their Power not being fix'd, 'tis difficult to determine when 'tis carry'd beyond the utmost extent of its Tether. But that there is a Tether to their Power is most certain, since besides divine Revelation, the Law of Nature or Reason tells us, that there are rules and measures of Right and Wrong which no positive Law of Man can exceed. That they have reckon'd themselves ty'd to such Rules, is evident from their constant practice, not only in making, but also in repeal-
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ing Laws: Of the latter kind I shall only produce one Example. In the 13th of *Edw. III.* the Lords and Commons press'd the King to pass a Law derogatory to his just Prerogative. That Parliament being ended, and the Kingdom representing it self again the same year, it was enacted, *Whereas in the last Parliament certain Articles expressly contrary to the Laws of England, and the PREROGATIVES AND ROYAL RIGHTS, were pretended to be granted by manner of a Statute, the King considering how that by the Bond of his Oath he was bound to the defence of such Laws and Prerogatives, because the King never truly consented to the said pretended Statute, only dissimulated to eschew the dangers which by denying the same he feared to come, forasmuch as the said Parliament had otherwise been without dispatching any thing in discord dissolv'd, and so the earnest Business had likely been ruined; it seemed good to the Earls, Barons, and other wise men, that since that said Statute did not of the King's free will proceed, the same should be void.*

This shews that at that time the Parliament thought hard of Statutes that bore hard upon the King, and destroy'd his Prerogative, and therefore they comply'd with him, when, as he was bound by Oath, he sought for a Restitution of it against a forc'd Law.

That in making Laws they reckon themselves tied to Rules and Measures of equal Justice, is obvious to every man's Observation. If a River be to be made navigable, tho' it be never so convenient for the Publick, yet don't they by that high Power which they have, as the Representatives of the People, enact the doing it, till they receive the Petitions of the aggriev'd, and consider the Damages they shall sustain by it.

If Money be to be rais'd, they don't, in the greatest Difficulties, and the most urgent necessities of the Commonwealth, seize the Estates of particular Men, however worthless they be, and of little consideration to the Publick. Among us none ever is depriv'd of his Estate, unless it be for a trespass against the Laws: if the Practice be any where otherwise, some will think the Constitution is intolerable, and that the Law of Nature is not sufficiently receiv'd in that Land, where 'tis not a receiv'd Maxim, That an innocent Person must not suffer.

This shews whether they argue right or no, who in an Inquiry concerning the reason of seizing those forfeited Estates, assign
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that of the supreme Right which the States of the Kingdom have over every Man's Property.

'Tis most certain that there was another Reason for it, such as concern'd those Forfeitures particularly; otherwise why shou'd they alone be resum'd, and not other Lands also be vested in Trustees to defray the Charge of the War?

The Reasons are very common, and in every ones Mouth; and since they are such as set up a Title for the Publick against the King, and all who hold under him, I will represent them fairly, and leave it to my Reader to judg whether the force of them be sufficient to destroy so great a Right as is the first Prerogative of the Crown.

The Principal Title which for the *Publick* is set up to those Forfeitures, is grounded on the Promise of the King; and the reasoning of those who defend the Resumption runs generally in these words: The King promis'd to dispose of these Forfeitures for the use of the Publick: That Promise gave the People an Interest in them; after this Interest thus acquir'd, Grantees, Purchasers and Tenants were faulty in meddling with those Lands, and defrauding the Community; therefore the Resumption is but a reasonable and just Seisure of the Rights of the People. This is commonly said, and perhaps by a great many with a farther design than to destroy the King's Right to those Forfeited Estates. Before I represent his Majesty's Promise, as 'tis call'd, in his own words, and shew that it can't possibly be wrested to that sense in which *some People*, have taken a great deal of pains to have it understood, I shall desire my Reader to consider,

First, That they who insist upon a Promise of the King, never take notice of the Act of the Representatives of the People (which at least is as much a Promise as the King's was) who besides confirming the Lord *Romney's* Grant, by giving him an equivalent in a former Bill, left a third part of those Lands to the disposal of his Majesty.

Secondly, That this pretended Promise is of a Right and Interest which undoubtedly belongs to the Crown, and to which, by our Laws, none but the King could pretend the least shadow of Title.

Thirdly,

Thirdly, That 'tis of a Right not given to the antient Kings by any Grant of the People, but inherent in the Crown, and acquired by the Kings the first Founders of this Government, before they settled any Laws or Ordinances in the Land.

Fourthly, That 'tis a liberal and gratuitous Promise, and such as implies no Stipulation or Contract, since 'twas made by the King *ex mero motu*, without any Address from the States of the Kingdom, without any valuable, or indeed the least Consideration for the things promised.

These Considerations I offer not as Arguments to dissolve the Obligation of such a Promise as is pretended, but perhaps they may be thought reasonable inducements to People to put a favourable Construction on the King's Words, and not to strain the sense of them too far.

If the King did promise that he would imploy the Forfeitures to the use of the War, I will allow that they ought to have been so employ'd. Nothing, I think, ought to be so sacred as the publick Faith and Declaration of Princes. This the Emperor *Tiberius* himself understood very well, when he said, *Ceteris mortalibus inconstantia consilia quod sibi conducere putant, Principum vero, &c. Inferior Persons may order their Counsels as they best suite with their Advantage; but the Condition of Potentates is very different, whose Actions are principally to be directed by Fame and Glory (a).* For this reason it was that *Lanfranc* told *William* the Conqueror, That nothing was of so great moment to a Prince, as Reputation, and none more than that of being a religious observer of his Word and Promise (b). And *Q. Elizabeth* in a private Letter to *K. James*, was us'd to admonish him, That a Prince must be such a lover of Truth, that more Credit may be given to his bare Word, than to another's Oath (c).

After having made these Concessions, 'twill concern me to shew that his Majesty was guilty of no breach of Promise in making Grants of the *Irish* Forfeitures. That Promise which has made so great a noise, is part of a Speech which the King made to both Houses of Parliament, on the fifth day of *January* 1690. at the Adjournment of the Parliament. The words

(a) Tacit. Annal. Lib. 4. (b) Sir Will. Temple's Introduction, p. 237.

(c) Camden and Baker's Life of Q. Elizabeth.

are these. *And I do likewise think it proper to assure you, that I shall not make any Grant of the forfeited Lands in England or Ireland, till there be another Opportunity of settling that matter in Parliament in such manner as shall be thought most expedient.* If the King did not make any Grant, till there was another opportunity of settling that matter in Parliament, he was not guilty of any breach of Promise; but that he did not is plain. At the time when the King made that Speech, the Lords were possessed of the Bill *that apply'd the Irish Forfeitures to bear the charge of the War*: 'Twas sent up some days before from the Commons. When they met again after their adjournment on the 31st day of *March*, the ingrossed Bill lay before them: Will any one say that they had not then an opportunity of settling the matter? Could not they have passed the Bill, if they would? Most certainly. But they did what they thought more expedient; they let the Bill die in their House, because (as 'tis to be presum'd) they would not intermeddle with the Rights and Prerogatives of the Crown. But this was not all the opportunity the King gave them. The next Session another Bill was brought in to vest the forfeited Estates in *Ireland* in their Majesties, to be apply'd to the uses of the War. This Bill which allow'd a third part to be dispos'd of by the King, was lost in the Lords House as the former was. The next Bill that was brought in, fell in the House of Commons; so did several others in the years following. After the claim to the Forfeitures (as 'tis called) was thus disclaim'd by both Houses, by their giving up those three Bills, his Majesty taking this to be a tacit Submission to the Prerogative, began to grant away the Forfeitures. This Promise (as 'tis improperly enough call'd, since 'tis no more than a Declaration of his intention) was not herein the least violated: For what did he promise, that he would not make *any Grant of the Forfeited Lands, till that matter should be settled in Parliament*? These are not the Words of his Promise. But suppose they had been so, I can't see how it can be said that he broke it. When any matter is propos'd to be settled in Parliament, there are two ways of doing it, either by passing the Bill or not passing it: if the Bill be pass'd, 'tis settled according to the humour of one side; if it be not pass'd, but be rejected or suffer'd to fall in the House, 'tis settled according to the desires of

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an opposite Interest : but in the latter case the matter is as properly said to be settled as the former. But the King's Promise, as I said, did not extend so far ; he only said that he would not make *any Grant till there was another opportunity of settling that matter*. There is a mighty difference between settling a thing, and an opportunity of settling it : by opportunity we mean no more than convenient Circumstances of time and place ; and his Majesty by another opportunity could mean no more than till they, after the adjournment, met in that place again : then the Lords had an opportunity of passing the Bill which lay ingrossed before them.

But this, say some, is not the sense in which the Words were taken by the generality of People who had an interest in the Promise ; therefore they must be expounded according to their sense to whom the Promise was made. 'Tis not indeed the sense in which those pretended to understand them, whose Interest 'twas to have them understood otherwise ; but why must the sense of plain English be perverted to gratify their corrupt Interests ? and what reason can there be for having the words expounded according to the sense of those who have an interest in them, since they can't suffer by an equivocal or doubtful sense, since here is no contract in which they are over-reach'd, no manner of Interest to which they have any claim of right, but the Promise that is made proceeds from the mere Grace of the King alone ?

There is a difference between a *Stipulation* and *Promise*, and a very great one between one that promises, and him that only declares an intention of doing a thing. 'Tis a Maxim in the Civil Law, *In obscuris interpretatio debet fieri contra stipulatorem potius quam promissorem* ; *In obscure matters the Interpretation ought to be made against a Stipulator rather than a Promiser*. And there is another Maxim, *Promissori solent jura favere ne nimium obligetur* (a) : *The Laws are wont to favour him that makes a Promise, and to take care that he be'n't bound too much*. But in his Majesty's Case there is no need of such a favourable Interpretation, there is no obscurity in the words ; they are so very plain, that one can hardly take him to be an English Man, who understands them in

(a) Rittech. part. feud. cap. 17. q. 25. in fine libri. Vid. Magirum de advocatiâ, p. 583. nu. 16, 17.

any other sense than what I have deliver'd. If notwithstanding there be some who will wrangle on, and deny the sense of plain English, rather than quit the Interest they have in putting a forc'd and unnatural Sense on his Majesty's words, I shall endeavour to silence all their Cavils with the Resolution of Bishop *Sanderfon* one of the most eminent Casuists of our Nation. He distinguishes an *Obligation* where the Debt is founded on *Promise*, from that where the *Promise* is founded on an antecedent Debt. God himself, says he, who by Law is Debtor to no Man, yet by his gratuitous Promise makes himself Debtor to us: And he that by a Vow or Promise of his own accord ties himself to do any act of Charity, does thereby contract a Debt. But because this Debt is not founded in any right that he has to whom the Promise is made, but flows from the mere free and gratuitous Act of the Promiser; 'tis highly equitable that he be permitted to explain, how much, after what manner, and in what sense he intended to oblige himself (a).

After what I have said in this Discourse concerning the King's Title, no one, I believe, will be so hardy, as to say that the King's Promise (as 'tis call'd) was not purely gratuitous, or that 'twas founded in any right which was antecedently in them to whom the Promise was made: The consequence then must be, according to the learned Bishop *Sanderfon*, that he must be allow'd to interpret his own Promise.

His Majesty, by granting away the forfeited Estates, after that both Lords and Commons in effect told him that they would not meddle with the Rights of the Prerogative, has plainly told us, that he meant by those words what they truly signify, and not that foreign sense which some have put upon them. It follows then, notwithstanding that imaginary right convey'd by the King's Promise, that his Majesty had a right still to make Grants of those Forfeitures; and consequently that Grantees, Purchasers, Tenents and Improvers, had legal Titles, and were *bonæ fidei possessores*.

Since then 'tis manifest that the King's Promise cou'd make no alteration in his Right, we are to consider what other Title is set up for the Publick.

(a) *Sanderfon de juramenti obligatione, prælect. 6. §. 9. p. 120, 121.*

The Author of the *Discourse on Resumptions*, tells us, That the Peoples Right to the forfeited Estates in Ireland is founded upon the Mony which has been levy'd in England, and expended upon that War. To give this Doctrine of his the more force, and to strengthen the Peoples Title, he tells us, That from the time of Henry the Second 'twas so (d). That which it concerns me therefore to enquire is,

First, Whether the first Settlement of that Country favours this Right he sets up.

Secondly, Whether the Mony expended on the War gives us a Title to the Estates.

As to the first he tells us, That from the time of Henry II. Ireland has been made almost constantly to contribute something towards its Conquest or Reduction. In the very beginning, viz. An. 1170. part of its Lands were given to the Adventurers, Robert Fitz Stephen, and Maurice Fitz-Gerald, David Barry, Hervy de Monte Marisco, William Nott, Maurice de Prendiegraff, Meyler, Richard Strongbow Earl of Chepstow, and others.

This is a very extraordinary account, and such as demonstrates that the Author did not give himself the trouble to examine the History of those first Acquisitions; if he had, he would not have mention'd that which makes clearly against him. The true account is thus:

Dermot Mac Morogh, Prince of Leinster, and one of the five old Kings of Ireland, being overcome by other Princes of that Kingdom, apply'd for succour to K. Henry II. then in Aquitain. He not being at that time able to assist him, by Letters Patents granted licence to any of his Subjects to give him their assistance: he agreed in one place with Richard Strongbow Earl of Chepstow (one of these Adventurers mention'd by our Author) that the Earl shou'd the next Spring assist him in the recovering of his Country, that Dermot should give him his Daughter in marriage with the Succession of his Kingdom. Robert Fitz-Stephen and Maurice Fitz-Gerald (the other Adventurers here mentioned by him, whom the others he names accompany'd in that Expedition) made a Contract with him, that on condition he would grant them the City of Wexford in fee with two Can-

treds (or Hundreds) adjoining (which are the old English Baronies in the County of *Wexford*) they would assist him the next Spring.

In short, *Fitz-Stephen*, and *Fitz-Gerald* went over first to his Assistance, recover'd *Wexford*, and in a manner the rest of his Territories: and they had that City and Lands from him according to contract. After them *Strongbow* went over, and design'd the Conquest of the whole Kingdom, which *Mac Morogh* propos'd to him; he with the assistance of the others, got quiet possession of *Dublin*, and settled *Mac Morogh* in quiet possession of his Kingdom, which he marrying his Daughter had according to Contract. These are the first Acquisitions in that Kingdom.

Our Author tells us, that if *Henry II.* had conquer'd Ireland with only the Revenues of the Crown, without any Aid from his People, that Kingdom had been his own, **PLENO JURE**, as Civilians call it — But because the Kingdom was conquer'd at the general expence of **ENGLAND**, the Commonwealth here has always took it self to have an Interest to bind that Kingdom by Laws, &c. (a).

The Kingdom of *England* is mightily oblig'd to this Gentleman, and our Parliament has reason to thank him for his large Concessions. They have other Reasons than what he gives, and even Mr. *Cary* of *Bristol* might have reminded him of one considerable one, for that Power which they claim over that Kingdom.

But let us see how 'twas *K. Henry II.* made his Acquisitions, and whether that will make for the Peoples Right against the King at this time. The King hearing what progress the Earl of *Strongbow* made, began to have a hankering after his Acquisitions: *Strongbow* therefore sent *Reymund* one of his Followers with a Letter to the King then in *Aquitain*, in which he put him in mind that he had his Licence to assist *Dermot*, and tells him that as what he acquir'd proceeded from his munificence, so it was all at his command, and should return to him whenever he pleas'd. Afterwards 'twas agreed in *England* that he should

(a) *Discourse on Resumptions*, p. 208, 209.

deliver up to the King *Dublin*, with the Cantreds, Baronies, or Hundreds adjoining, and all the maritime Towns and Castles, and he and his Heirs should hold of the King all the rest that he had obtained. In like manner did King *Henry* force *Fitz-Stephan* to resign *Wexford*, and the Lands adjoining.

This was the first acquisition of King *Henry* in *Ireland*; 'twas a very easy one, and cost the People of *England* nothing.

After this bargain made with *Strongbow*, the King himself set out for *Ireland*, and landed at *Waterford* the 18th of *October*, 1172. Whilst he was in that Kingdom, most of the Kings and mighty men of *Ireland*, except the King of *Conaught*, who call'd himself King of all *Ireland*, came in, submitted, and swore Fealty to him.

This was the Conquest made by this Prince, which will never favour the Author's Doctrine for destroying the King's Title, and the People of *England*'s having a better Right to the Lands now, because that Kingdom was then conquer'd at the general expence of *England*. The Territories which he obtained cost *England* no Money, for they were taken from *Strongbow* and *Fitz-Stephan*, who had them from *Macmurrrough*; nor was there any Blood spilt in that Conquest.

But 'twill be said that the King conquer'd, because the Princes of the Land submitted to him. 'Tis true, there may be a very full and absolute Conquest without fighting. Since then the Conquest which he obtained over those Princes, by bringing them to such Submissions, was owing to the Forces which he carried over, which were raised at the general charge of *England*, 'twill be urg'd that this gave the People a Title to the Perquisites of the Conquest. Tho that really had been so, yet this does not follow. People may be at a vast charge in raising Money to carry on a War, and yet the Prince may dispose of the conquered Lands, if the Law and Constitution of the Country be so.

But this was not King *Henry* the Second's case; he made the acquisition by his own Sword and Bow, and by Troops paid out of his own Purse.

Several Chronicles tell us, that tho he maintain'd great Wars, yet he never demanded Subsidy of his Subjects (a).

(a) Speed, Baker, Haywood's Hen. 4. 1st Part, p. 56.

If there had any extraordinary Tax been rais'd upon this Kingdom for the charge of his *Irish* Expedition, some of our Histories would have told us of it.

'Twill be ask'd then, how was it carried on? The Question will be easily satisfied. First, 'tis to be considered that his Dominions were larger than those of any of the former Kings of *England*: for he had *England* and *Normandy* by descent from his Mother *Maud* the Empress, *Anjou* and *Main* from his Father *Geffery Plantagenet*, and *Aquitain* by his Wife *Elenor*. His Treasure likewise was very great; for after his Death 'twas found to be nine hundred thousand Pounds, besides Jewels and Plate. This was a prodigious Sum in those days. The charge of his *Irish* Expedition could not be great: The design of it seems to have been no more than to secure and settle the Territories surrender'd by *Strongbow*, and to frighten the little Princes of that Country into submission; for he advanc'd no farther than the Adventurers had done before, and had no Action during his stay there. For this undertaking, or if indeed he had designed to subdue the Kingdom, a small Body of men would have served. *Robert Fitz-Stephan*, who landed first in the Country, had but 390 men, which, with the assistance he was to find with *Macmurrough*, were to sustain all the Force of the Enemy. And *Strongbow*, who designed the Conquest of the whole Kingdom, carried over only 1200 men. King *Henry* therefore could not think a great number of men necessary for what he designed to execute. Five hundred Knights or Men at arms, and some ordinary Horsemen and Archers were the whole of his Army. But must not the charge of this Army, such as 'twas, be necessarily defray'd by his *English* Subjects? No: If he had not been Master of that great Treasure I mentioned, there was another ready way to do it. Those who held of him by Knights Service, were by their Tenures oblig'd to follow him into his foreign Wars; and of those who hold in Escuage particularly, the Service is commonly called *Servitium forinsecum* (a). This *Littleton* tells us: *They who hold by Escuage*, says he, *ought to do their Service out of the Realm* (b). Of those who

(a) Bacon's *Uniformity of the English Government*, pag. 298.

(b) *Littleton's Tenures*, lib. 2. Sect. 155.

held Lands of him in Knights Service were the 500 *Knights* who accompanied him into *Ireland*. What therefore he obtained by means of them was (to speak in the phrase of our Author) *an Acquisition made by his own Sword and Bow, and by Troops paid out of his own Purse*. Had it been done by the Rents received out of the Lands, it must necessarily be allow'd to have been so: But these Tenures were the very same thing, for they were reserved instead of Rent: And *Littleton* and my Lord *Coke* both tell us, That *Escuage* after a Voyage Royal may be assess'd and made certain (a). This Service was so considerable in the time of K. *Henry the Second*, that we are told one *Scutage* in the fifth year of his Reign, to raise men for the Siege of *Tholose*, came to one hundred and eighty thousand pounds.

From what I have said it appears that the first Acquisitions make not at all against the King, and are no argument for a Right in the People now to dispose of Estates there, since the first Acquisitions were not made by their Treasure, as this Author pretends. I come now to consider,

Secondly, Whether the Money we have expended gives us a Title to those Lands. The Author does not say, that whenever we expend Money in War, we ought to be reimburs'd again. No, he allows, that where the Honour of the Prince, and the Honour or Interest of the Nation are concern'd against a foreign Enemy, most certainly we are to give necessary Aids and Subsidies, without prospect of reaping any other fruit from our Expences than Fame and Safety; but when *England* has to do with its own Subjects, he thinks they ought to be brought to pay a part of the reckoning (b). This perhaps may be reasonable, and the Protestants of *Ireland* say they have paid a very large part, and yet own Obligations to *England* for their Succour. I have heard some of them offer to demonstrate, whenever we will come to account, that the Troubles of *Ireland* cost them forty times as much as they have cost us, in proportion to our Numbers and Estates. This is paying part of the reckoning with a witness: but if more ought still to be paid, why should it not be levied on the Kingdom in general? Why should the Protestants who had

(a) *Coke 1st Part. fol. 72. A. B.*

(b) *Discourse on Resumptions, pag. 411, 412.*

Grants from his Majesty in consideration of their Losses, as well as Services in that Kingdom? Why should *English* Purchasers and Improvers pay the whole? Why should the *Irish* be favoured, who were the Cause of that great Expence?

But my Author says, that *the People of England are to be look'd upon as Adventurers; the Money levied and expended is their Adventure, and the forfeited Estates ought to be the return.* 'Tis a very fair return, when People have that which they adventur'd for. The *French* were Adventurers in that Kingdom, but have no Lands for their Adventure; yet don't they think their Money thrown away, since they gave so great a diversion to our Troops there. We have all that we aim'd at in that Expedition.

First, We undertook it to render our selves secure at home, which we knew could not be, if the *Irish* had the Lands, and the *French* the Ports of the Kingdom.

Secondly, Our design was not only to subdue the Rebels in *Ireland*, but to oppose the Force of our Enemy the *French* King, with whom we had a great War on the Continent.

Thirdly, 'Twas to preserve our antient Glory, which we had shamefully abandoned, had we given up that Kingdom to our Enemies.

Fourthly, 'Twas to succour our Protestant Brethren there, who had brought themselves under great difficulties by adhering to our Interest. All that we adventur'd for was Security and Glory: These we acquir'd by that Expedition; but if we offer to take more than these just returns of our Adventure, we run a great hazard of lessening both. Nor is this all the return we have had: The great *Smyrna* Fleet (to say no more) which plainly escap'd the Enemy by getting into harbour in that Kingdom, did much more than reimburse us all the Treasure that we sent thither to defray the charge of that War. These and all other Advantages which in future Ages we shall reap by the reduction of that Kingdom (which in all probability are no less than the preservation of our own) are to be accounted the returns of that Adventure.

The Forfeitures can be no part of the Acquisition, they belong'd to the King, and, in strict speaking, were his before we were at any expence in the War. 'Twas purely the Rebellion of his Subjects, which was prior to our Expedition to reduce

reduce them, that gave the King a Title to those Estates; and a bare Attainder and Conviction, which is no more than an evidence of their Trespasts, was enough to vest the Lands in his Majesty.

But still 'tis urg'd, that 'tis reasonable that, our Charges consider'd, those Lands should go towards easing us in our Taxes. When we argue about what may be accounted reasonable or unreasonable in this case, we are to consider those Estates in two different circumstances of time; First, whilst they were in his Majesty's hands. Secondly, after they were granted away by him.

Whilst they were in his Majesty's hands, I will allow it might be reasonable enough to desire a part of them to defray the charge of the War, when the value of them was reckoned to be so considerable as they were then represented. In this case neither the Prerogative nor any of the King's Subjects had suffer'd by it.

After that his Majesty, not without the allowance of the States of the Kingdom, had granted them away the case was alter'd, they were made the Property of others: and 'tis humbly offer'd to be consider'd, whether this may not be too great a hardship on the King, on those who had Grants from his Majesty, and on Purchasers, Tenents, and Improvers.

First, As to his Majesty, it must be own'd that he had an undoubted Title. Had *Domitian* the *Roman* Emperor been King of *England*, had he during the great War we were engag'd in, not concern'd himself with the Toils and Dangers of the War, and minded nothing but his little diversion of killing Flies, yet would he, by our Constitution, have a Right to dispose of the Forfeitures, and his Grants would be good. His Majesty has fought our Battels in *Ireland* and *Flanders*, he has preserved our Religion and Liberties, he did restore the Balance of *Europe*, he has retriev'd our Glory and Reputation abroad, and has done more for us than all our Gratitude, all our Respect can repay. This methinks should strengthen a Plea for a Right which was never yet denied to any *English* King.

Secondly, 'Tis to be consider'd whether it be not too great a hardship which is put upon his Majesty's Grantees? Their Patents gave them as good titles to those Lands as any have

to their Estates. Their Titles, which are legal and good in themselves, they have strengthened by their Services. There are but very few of them who have not accompanied his Majesty in his Dangers, who have not had a hand in the reduction of that Kingdom. In former Resumptions (which were always just what the King was pleased to make them) regard was always had to those whose Services were pleaded; here the King's nearest Friends, the *General*, and other Leaders of his Host, and many persons of great Merit suffer in the common Calamity, pass unregarded in the general Resumption.

Many say 'tis reasonable it should be so, since among those who reap'd his Majesty's Favours, there were a considerable number of Foreigners. This brings into my mind a Saying of the good old Man the Lord Chancellor *Ellesmere* in his Speech touching the *Post-nati* in the time of K. *James* the First. *There can be no man so simple, says he, or childish (if they have but common sense) as to think that his Majesty should have come hither amongst us, and have left behind him in Scotland, and cast off all his old and worthy Servants (a).* 'Twas inconsistent with his and our Safety, that his present Majesty in his glorious Expedition to deliver us, should come into our Kingdom without a great Train of Friends and faithful Servants. If at their first Arrival we received them with joyful Acclamations, and his Majesty experienced their Fidelity and good Services afterwards, 'tis hard to envy them the demonstrations they have had of his Kindness and Favour. 'Tis but reasonable that a Prince, who has made so great a figure in the World, and has done such mighty things for us, should leave considerable Monuments of his Reign in great and noble Families. He has indeed confer'd Honours, but they can't shine with any great Lustre, when the Estates given to support them are taken away. They who rejoice at the Act upon the account of what Foreigners suffer by it, are very far from considering the true Honour and Interest of this Nation. *Xenophon* told the *Athenians*, That 'twas not by force of Arms, but their good Offices to the *Greeks*, that they were plac'd at the head of the Naval Confederacy (b). We shall always want

(a) Lord Chancel. *Ellesmere* touching the *Post-nati* in Scotland, p. 119.

(b) In his Discourse concerning improving the Revenue of Athens.

Friends and Confederates abroad; but the way to secure the strongest Interest in them is not to express our hatred to them, and treat them unkindly.

Thirdly, 'Tis to be considered whether it be not too severe on Purchasers and Improvers. The former indeed have a third part of their Money allow'd them, and probably the whole had been given, if some People out of an extravagant zeal for the Publick, had not taken some pains to make the Parliament believe that they were not only guilty of great Frauds in purchasing, but had received their Purchase Money in the mighty profit of their Bargains. 'Tis to such an insinuation as this we are to ascribe that Passage in the Act, in the place where this third part is settled, which declares, That no such allowance shall be made to any such Purchaser who by perception of Profits have been satisfied their said Purchase Money. The Purchase must be very easy, if the Rents of one year, or a year and half at the farthest, would reimburse the Purchasers. The Insinuation was a very convenient way to incense the Parliament against them, and to prevent their shewing that Mercy which they otherwise probably would have done.

The Tenents and Improvers are many thousands in number, and some of them have laid out great Sums, not only in the Country, but in several places in the Cities in building new Houses on waste pieces of Ground, and repairing old ones. These Sufferers are in a manner all *English* Protestants, such as in the Troubles of that Country have hazarded their Lives to subdue the Rebels, and keep that Kingdom in obedience and subjection to the Crown of *England*. And that which aggravates the hardship of this Calamity is, that for the most part they are the very people who were spoiled of their Goods, had their Cattel driven away, and their Houses burnt during the Tyranny of their *Irish* Lords. These people, destitute of habitation, were they who had the hard fate, after their Sufferings under the lawless domination of the Rebels, to be encourag'd by his Majesty's Order whilst the Lands were in his hands, and afterwards by his Grantees. The Labours of their younger age the merciless Enemy devour'd, and what they toil'd, what they built and improv'd for their ease and comfort in the last and heaviest Scene of their Life, is taken away by the Resumption.

Having enter'd upon this melancholy Subject, I can't but take notice of the deplorable condition of the poor *French* Protestants at *Port Arlington*, which is part of the Lord *Galway's* Grant: Those poor people by the incouragement they had from the compassion and gooduefs of that Lord, built about one hundred and thirty neat Tenements in that place, which must now become the Habitations of *Irish* Papists, since they are the People, who (whatever they pay) will promise the greatest Rent to the new Purchaser. If neither the Services of that noble Person in *Piedmont* and *Ireland*, nor his Piety towards his distressed Countrymen, nor the greatness of his Title, and the smallness of the Fortune which he has to support it, will seem Motives sufficient to restore him to his Estate, which he is depriv'd of by the Resumption; it must seem a very extraordinary hardship to People who have any bowels of compassion, to see such a number of miserable People, who were a long time afflicted with severe Persecution in their own Country, find such treatment in a Country to which they fled for refuge.

But some will imagin the Purchasers will not disturb the Tenents. This is a wild Notion, those who purchase Lands with the Improvements, must make the most of them; and how should it be imagin'd that private men should be so tender-hearted, if the Parliament will not think their case deserves compassion. The case of all these Purchases and Improvers must to any considering man seem very hard. 'Tis hard that they who suffered so much for the *English* Interest, should after they betook themselves to Husbandry, to which they were invited by several Proclamations, and without which a greater Famine than was must have fallen upon that Land, after they had settled themselves by their Labour and Industry in the toil of several years, should be thus thrown out of their Settlements. And the Case of those who purchased and improved under the Lord *Romney* and *Athlone*, as well as of their Lordships themselves, may seem harder than ordinary, since the Grant of the first was before any Bill was brought into the House of Commons; and in the Bill brought in on the 12th of February 1691. there was a Clause for his Majesty to grant to him Lands of the same value with his former Grant: And the other noble Lord had an Address from the House of Commons,

Commons, and Thanks for his good Services. Of all these people it must be said that they laid out their Money and improved upon good Titles, and it must be own'd that none were ever before depriv'd of their Properties by an *English* Act of Parliament.

Some I know will object the seizure of the Abbey Lands in the Reign of *Henry* the Eighth; but 'tis to be remembered that they were generally resign'd to the King; and 'tis very well known that the Tenants were every where allowed to continue in possession of their Leases.

But on the other side it is said of the Improver as well as Purchaser, that he was *Felo de se*, and brought the Calamity on himself; that he knew what claim the Commons made to those Lands, and therefore ought for his own security to have remember'd the old Maxim, *Caveat emptor*.

They who apply that Maxim in this case, do, I think, stretch it a little too far. When the Purchaser is required to act with caution, that caution can only respect the Laws that are in being. The most cautious man in the World can't with all his circumspection provide against a Law that may be made afterwards. If it be drawn once into practice to deprive men of their Properties by Laws *ex post facto*, the Maxim *caveat emptor* must be out of doors. When *Magna Charta* says, *Nemo amittat feudum suum, nisi per iudicium parium aut leges terra*: Let no man lose his Freehold, but by the judgment of his Peers or the Laws of the Land; it means the settled common Law of England, or Statutes made to punish after-Crimes. These are the Laws that we are to have a regard to, and no one need in a well ordered Government (and indeed cannot) extend his caution beyond them. The Law, says my Lord Coke, is the surest Sanctuary that a man can take, and the strongest Fortress to protect the weakest of all. *Lex est tutissima cassis, & sub clypeo legis nemo decipitur* (a). In the Laws abroad 'tis a Maxim, *Quod lege non cavetur, in praxi non habetur* (b). We use no caution but what the Law prescribes. In 36 Hen. 6. fol. 25. Fortescue reasons thus: The Law is as I have said, and so hath been always since the Law began. Could not a Grantee, a Purchaser and Tenant say the same concerning their Titles?

(a) Coke 2d Part, fol. 56. (b) Magerus de Advocatiâ, f. 229. §. 386.

if they could, what need was there for their using any further caution?

In 37 Hen. 6. f. 22. *Ascue* reasons thus, *Such a Charter hath been allowable in the time of our Predecessors who were as sage and learned as we.* If his Majesty's Charters of Grants were allowed in those times, why should we be wiser than they were? In short, he is a wise and cautious man enough who is as wise and cautious as our Laws require him to be: he that is not sure of that Inheritance which he has in them, cannot be said to live in a free State, or under the Government of Laws. This shews us that notwithstanding the maxim *caveat Emptor*, Purchasers and Improvers have reason to complain of hardship.

But further 'tis said, that 'tis unreasonable that such a vast Sum of money should be intercepted from the Publick, and that we should waste our Blood and Treasure only to enrich a few private Persons.

'Twill hardly be said that 'twas unreasonable for his Majesty to make any Grants, since the Parliament has confirmed his Mercy and Favour to several outlawed Persons; nor will it be denied but that 'twas reasonable he should reward the Services of some others, and dispose of something among People whom he thought deserving, since the Parliament themselves in the height of War, when we had greatest occasions for money, by a most generous act gave one hundred thousand Pounds to *Duke Schomberg*. That which is generally excepted against in his Majesty's Grants is the vast Sum that is given, of which we shall find the Commissioners estimat to be very extravagant. In a little Discourse published the last Session by an anonymous Author, entituled *the Case of the Forfeitures in Ireland fairly stated* (out of which and a short Letter given about by some unknown hand, I must own I have taken several hints) I find the Author says, *had the Forfeitures in Ireland been sold for the use of the Publick in the Year 1690, or some Years after, 'tis certain they would not have raised near Two hundred thousand Pounds.* From which he rightly infers, *the King has not given to all his Friends, all that served and suffered in that Kingdom, twice as much as what the Parliament gave Duke Schomberg.* If this be so, there can be less reason for our complaining of what his Majesty has given away, the Computation could not but seem very

very odd at that time when we had such large accounts of those Forfeitures; and yet I find by enquiry and a stricter Calculation now, that he might have made his computation a great deal lower, and brought the Forfeitures very near to the Sum given by Parliament to this great General.

In order to represent this matter clearly, I will endeavour to make a *probable estimat* of the Forfeitures. This is what the Trustees in their late Report tell the Parliament they were not able to do. They have taken *Methods* by which they *humbly conceive*, they shall come to the *Knowledg* of the value of the Lands; but by reason of the great Rains that have fallen this Winter, the Survey has been much delayed, and the *Districts* of the Receivers are so large, and their Instructions are so particular, that they cannot as yet expect from them such an account as they may rely on, and consequently *fit* to be laid before the House. This I believe: The Account is very short of the return of the Commissioners; therefore for the very same reason that they thought it *fit* the last Year to lay a large account before them, they think it *fit* this Year not to deliver in any account at all. *The Claims upon the Estates*, they say, are so many, that they cannot make any *probable estimat* what will be the real produce: In the Report the last Year, they returned the Lands worth considerably above two Millions of Money, and said that the forfeited Houses, Tithes, Debts due to forfeiting Persons, Fairs and Markets, Ferries and Fisheries, chief Rents, Mills, good Lands called unprofitable, Denominations of Lands to which they could annex no number of Acres (which by the by are Lands of their own making) Woods, &c. would a great deal more than answer all Incumbrances and profitable Leases; and so the Lands would produce considerably more than what they returned.

These particulars, which they returned to answer the Incumbrances on the Estates, will, I fear, go but a very little way towards it. The Woods which seemed to be the most likely Branch, and were returned worth Sixty Thousand Pounds, they have in this Report in a manner given up; for they talk of *considerable Wasts*, most of which they say have been made by ordinary People, not able to answer the expense of Witnesses. This the Publick must take for a satisfactory reason why they can't make money of those Woods; the Reasons that hereafter will

will be given for the deficiency of other Branches will not be much better. If the Debts by Judgment and Statute, and the Mortgages due to forfeiting Persons, which (according to their Report) amount to 120013*l.* 13*s.* 10*d.* should happen to be Debts that are already discharged, or to be due from Persons, as poor as those who destroyed the Woods (as I fear they will) if the great Rains which the last Winter much *delayed the Surveys*, have destroyed the 61 Mills formerly mentioned; if the 28 Fairs and Markets should happen to sell for little or nothing, and the six Ferries and Fisheries should come to no better a Market, they will be mightily disappointed in those perquisites, which they delivered in their former Report by way of discount, to *discharge the Incumbrances* on the forfeited Estates, which they found in the Exchequer to be 161936*l.* 15*s.* 6*d.*

In their late Report they say, that the *Claims* upon the forfeited Estates are so many, *that they cannot make any probable estimate* what will be the neat produce. Tho they cannot pretend to tell exactly what the produce will be, yet they might have told what they had set the Lands for: They were aware this might be some prejudice to them, therefore as to that their return is, that they *humbly conceive* (which was the Style of the former Report) they *ought to make no estimate of the VALUATION of the Lands from the present Rent*. The reason they give for this is, because they found it difficult to prevail with the Tenants, who had taken Leases from the Grantees to advance their Rent; most of them being Protestants, and having made Improvements upon their Land, deserved all the Compassion they could justify: and further they were afraid, that if they used Extremities, they should drive them off the Lands, and give ill Impressions to the rest of the Tenants.

Notwithstanding these reasons, it must be allowed, that no People ever had such an Opportunity of learning the true value of Land as they had. They immediately after they went over (as they represent in their Report) gave notice in print to all Tenants and Occupiers of any of the forfeited Estates to deliver in true particulars of the Quantities, Qualities, and real value thereof (pursuant to the Act) and required the Sheriffs of that Kingdom to publish the same throughout the several Counties. Accordingly the value of the Lands was by the Tenants and Occupiers

cupiers delivered in upon Oath, and according to that Oath they were set by the Trustees. If it hapned that the Undertenant when he was under that severe scrutiny return'd the value of the 1 and six Pence more in the Acre than he paid, that was the Rent they charged it at, and that Rent (tho' it was more than they would have given when they took the Land) they made them pay from *November* was twelvemonth, which was before the Bill passed. This the Tenant was forc'd to do, because he must otherwise have wanted a Habitation for himself, or Pasture for his Cattel. In some places the Rent imposed was so severe that they were forced to quit the Land.

If this Method was not sufficient to bring them in a true account of the just value of the Lands, methinks they could not fail of being fully informed by the Commissioners they sent into the several Counties to set the Lands, and enquire into the true value of them. If there were some few of the Tenants who neglected to obey the Act (which could not be I'm sure for want of that Fear and Terror which is apt to make People observant of Laws) and return the value of the Lands upon Oath, the Commissioners when they went into the Country, might easily make up that defect.

In their Report they say that the Expence of the Commission has been about 40000 *l.* sterl. that is (as Exchange now goes) about 50000 *l.* *Irish* Money, which is just double the Charge of the whole Civil List of that Kingdom. 'Tis much that after expending so much Money they should not be able to learn the value of the Lands.

In order to make a probable Estimate of them, I will suppose them to be worth 60000 *l.* *per ann.* This I believe will be found to be considerably more than they are set for at present, tho' they have been set after the manner here delivered. If we value them at thirteen years purchase (which is a great deal more than Lands have been continually sold for in that Kingdom, and considerably more than those Estates will yield two or three years hence) then the full value of them, considered as Fee Simple, and free from all incumbrance, will be

780000 *l.*

The Lands of forfeiting Persons (over and above the Estates restor'd by the King's favour, and the Articles of *Limerick*, &c.)

by the Commissioners were valu'd at 1699343 *l.* 14 *s.*
 Add to this the private Estate, by them }
 valued at 337943 *l.* 09 *s.*

The value of the whole according to }
 them at 13 years purchase, will be 2037287 *l.* 3 *s.*

The real value of the whole being 780000 0

It appears that in the first value of the }
 Lands they are mistaken 1257287 3

It must be noted that out of this Error here set down, we are to except what was given away by several Clauses in the Act of Resumption, which makes but a very insignificant part of the great Sum they were mistaken in.

Out of the total value of the Estates returned as Fee Simple, which I set down at 780000 *l.* we are to deduct,

First, all Debts and Incumbrances on those Lands. The Commissioners represented in their Report that all the Statutes, Judgments, Mortgages, or other Debts which appeared to them to affect the said Estates restor'd, amount to 161936 *l.*

These are only those which were found by Inquisition, and allow'd by order of the Exchequer. Besides these they will find (and have already found) a great many more: And they themselves may remember very well that there were other good Incumbrances shew'd to them, which they thought not proper to mention in their Report, tho they insinuate that they returned all.

Secondly, All those Lands which will return to the next Heir after the death of the present Tenant for Life, the forfeiting person. Of this sort there are many great Estates: Such is the great Estate, or rather Territory (as the Commissioners call it in their Report) of the Lord *Bophin*; the Estate of Col. *Bagnet*, an old infirm man, which they have valued at above 5000 *l.* *per ann.* the Estate of Sir *Valentine Brown*, which is much more valuable than that of Col. *Bagnet*; the Estate of Col. *Baggot*, and several others.

Thirdly, We are to deduct the Quit-rents, which the Trustees in their late Report have returned at about 5000 *l.* *per ann.*

Fourthly, We are to deduct the value of all the beneficial Leases, and whatsoever has or will be gain'd by the 3092 Claims, about 800 of which have been already heard, and of those but one eighth part rejected.

These

These will cut off more than a third part of the real value of the Fee Simple, which I have set down.

I don't here take notice of such small Sums as the 10000 *l.* due to the Lady *Bellasis*, the 21000 *l.* allow'd the Purchasers, and the other two thirds which will without all doubt be thought as reasonable to be allow'd as that third part.

Among the Deductions I may reckon three years Profits of all the Lands, which will be swallowed in the Expences of the Trust.

Besides these there will be other Deductions. Some Estates have already been recover'd from the Trust, more will follow before the Books are shut up, as we may very well imagin from the Inclinations observ'd in some men to favour the *Irish* Claimants.

But I will abstract from all Deductions of this kind, and allow (which will be found to be a large reckoning) that the forfeited Lands in *Ireland* will yield 500000 *l.* in that Kingdom. This, if it were at this time to be paid into the Exchequer here, would be but 400000 *l.* Let us now compute what those Lands would have yielded us in the year 1690, or two years after. I can't forbear mentioning those years, because till then they were undispos'd of, till then the Parliament might have desired them of the King for the use of the Publick: Afterwards his Majesty made them the Property of others, and 'twas by the turn of Time, and the Labour and Improvements of poor Tenents that they grew up to that value which they now bear. In those years an Acre of Land generally in those Countries where the great Forfeitures were (unless 'twas very near *Dublin*) did not yield a fourth part of what they will now: and had they then been expos'd to Sale, the Purchase would have been at least as low as this Rent, because People during that great (and when I consider how the King's Person was expos'd, I will say uncertain) War, were not very fond of purchasing. If this computation be allow'd me, which I take to be a very just one, 'twill follow that in those years these *exorbitant* Grants which the King has made, would have yielded but 100000 *l.* which is no more than the Parliament gave to Duke *Schomberg*.

This Account of things may perhaps dispose us to think a little more favourably of the *Grantees* than that Reflection in

the Report of the Commissioners may encline us to do, when they tell us, *That as most of them have abus'd his Majesty in their real value of their Estates, so their Agents have impos'd on them, and have either sold or let the greatest part of those Lands at great undervalues.* If time, and the labour of Man has made a great difference in the value, the Imposition is not so great: And if, after all, the value be very much lower than what they have represented, it may be ask'd whether the Grantees be the only persons who have *abus'd his Majesty*, and whether they are the only men whose *Agents have impos'd upon them.* If others have been faulty, I would fain know whether those Gentlemen were not so who by their Errors led our honourable and wise Representatives into that Vote of the 18th of January, *That the advising, procuring, and passing Grants of the Forfeitures and other Estates in Ireland, hath been the occasion of contracting great Debts upon the Nation, and laying heavy Taxes on the People.*

'Twas very hard to go through such an Enquiry without committing some Mistakes; but 'tis very strange how they should err to that degree, as to return the Forfeitures of the little County of *Carlo* at above eighty thousand Pounds, when a Gentleman who knew them all very well, declar'd several times (as I have heard say) publickly in Coffee-houses, and to several Members of Parliament, that he would prove they were not worth the sixth part of that Money.

This large Reckoning has been made, first, by returning too many Acres (which happened partly by their following ancient Patents rather than the true account that was given, which made a wilful mistake.) Secondly, by over-valuing those Acres. Thus it is that they have returned the private Estate at 259954 which is above three times more than 'twas ever set for. The number of Acres returned in their Report, ~~where they have taken their measure from the Grantees Patent, is 95649,~~ altho neither the late King nor the Grantee were ever in possession of great numbers of those Acres so pass'd (This they say in their late Report, and of this the Commissioners were sufficiently inform'd before they made their first Report) they belonging to persons whose Interests were sav'd by the Acts of Settlement and Explanation, as innocent Papists and Protestants, and many of the Lands which were in the possession of King *James*, were evicted in his time, and
some

some since the Revolution. Besides, great numbers of Acres were held in Fee-farm by persons not forfeiting, at very low Rents, some bare Acknowledgments, most whereof are precedent to the Rebellion in 1641; and others made by the late King.

To this are to be added the several chief Rents payable out of this Estate to the forfeiting Persons, all which must be deducted out of the Report, in order to learn the true value of the Estate, and are as follows.

Land never recovered, altho in Patent, and deficient upon Survey, for which the respective Tenents have yearly defalcation, 13093 Acres.

Lands evicted ————— 1785

The Farms where only Acknowledgments paid 1856

Total of Acres by the Report ————— 95649

Deducted from them the above ————— 16734

There remain ————— 78915

Which at 2 s. 6 d. per Acre, make yearly ————— 9864 7 6

Out of which deduct chief Rent paid out of the Estate, and Rent Charges granted to perpetuity. } 67 4 6

There remain ————— 9797 3 0

Perhaps the value here set down upon the Land may to some seem too low. The Gentleman who set it declar'd to the Irish Commissioners upon the Oath he had taken before them, that 'twas as much as he had set his own Estate for.

But the Circumstances of this Estate are very different from any other in that Kingdom, in order to the understanding of which the nature of it is to be considered.

The Duke of York had granted to him the Estates of all the Regicides, with a Clause of Reprisal for such Lands as should be evicted; but this prov'd very short of what the Acts plainly intended, by reason of the want of Lands to reprice him with, the Stock of the Forfeitures of that Kingdom falling short several millions of Acres. For which reason, and in order to restore the Nominee, &c. the Souldier, Adventurer, &c. were obliged to retrench a third part of what they were entitled to by the Act of Settlement, but with this liberty, that

that they might retrench what part they pleas'd, doing it by a streight Line according to the directions of the Act. With these retrenched Lands (which to be sure were the worst part of the Parcel) the Duke was reprimed.

Of this kind several thousand Acres of this Estate were, and they being small Parcels, 'twas impossible that they should be set otherwise than the Proprietors of the grand adjacent Denominations were pleased to take them.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
This Estate yielded but very little till } <i>May</i> 1694. and then only	4586	2	0
<i>May</i> 1695. —————	5125	9	3
<i>May</i> 1696. —————	5652	0	11 $\frac{1}{2}$
<i>May</i> 1697. —————	6725	7	00
<i>May</i> 1698. —————	7023	14	7 $\frac{1}{2}$
<i>May</i> 1699. —————	7912	00	1 $\frac{1}{2}$
From the 1 st of <i>May</i> 1701. the rent of } the whole will be	8489	7	3
Fines receiv'd out of the Estate (which } by the Resumption are lost to the Te- } nants) by Mr. <i>Tho. Brodrick</i> , and Mr. } <i>Robert Pooley</i> .	9887	9	2

Besides this there was about a thousand Pounds received before. This Estate is now set to solvent Protestant Tenants, every one of whom is bound to build, &c. to which they were induced by having Leases for Lives, with renewal, for which the Tenant is to pay half a Years Rent within Six Months.

Concerning this Estate we are further to take notice, First, that great Quantities of Land formerly in the Possession of the late Duke of *York*, were by him disposed of by Sales made to several Persons; Secondly, that part of this Estate is passed in Patent to the Earl of *Athlone*; Thirdly (which the Report takes notice of) that the Lady *Bellasis* and Mrs. *Godfrey* had three thousand Pounds *per Ann.* out of it during Life by Virtue of an old Grant, and that there is an arrear of Ten thousand Pounds due to the Lady *Bellasis*, which I hear the Trustees have allowed her.

Tho the mistake of the Commissioners has been very great as to the return they have made of the value of this Estate, yet

yet 'twill appear much less than what they have been guilty of in their other returns: because this Estate is free from any Incumbrances but what I have here mentioned.

Since those Gentlemen have been so much mistaken in the value of Estates, 'tis not very improbable that they have been overseen in other particulars of their Report.

They feed us with hopes of discovering many more Forfeitures; and in their late Report they have return'd 600: 'twas easy for them to have return'd the value of them had they pleas'd. The number sounds great, but the produce I am assur'd will be but very little. The things discover'd may be but of small value, and many may happen to discover the same thing. They talk of great quantities of unprofitable Acres (not return'd in the Report) which are very good Land; and many Denominations of Lands to which they could *annex no number of Acres* (which they guess to be 70 or 80000 Acres) which wou'd make a great addition to the value of the Lands return'd. The Rent at which the Lands are set, shews us what their produce will be: and the management of their Surveyors shews us in what sense it is that their *unprofitable Acres are very good Land*. There is a Gentleman in Town who tells us that when they were surveying the Land which he held, they took in a Bog, (of which he never made one Shilling) that contain'd about 10 times as many Acres as his Land did. Land it seems that's good for nothing, is *very good Land* to increase their number of Acres: But I fear that Land whereon nothing but *Fairies* tread, will raise only *Fairy Mony*.

They tell us that there were several rich Goods, and other Household-stuff deliver'd by the Commissioners of the Revenue to the Lords Justices, the Lord *Sidney* and the Lord *Conningsby*, which they don't find were ever return'd accounted for to his Majesty, or left in the Castle at their Departure from the Government. Mr. *Durvell's* Affidavit proves, that the Lord *Sidney* did leave them there. They tell us, that as well by the *general Report of the Country* (which was an excellent ground for their Report) as by several Observations of their own, it appears probable to them that many of the Persons who revers'd their Outlawries, obtain'd his Majesty's favour by *Gratifications to Persons* who abus'd his Majesty's Compassion. After this noise about the *General Report of the Country*, and
their

their own Observations, they descend to the Particulars.

The first instance they give us is of my Lord *Bellem*, who releas'd a Statute Staple of 1000 *l.* principal Money, and 7 or 800 *l.* Interest to the Lord *Raby*, in consideration that he wou'd use his Interest with his Majesty to procure his Pardon, which he did accordingly. The very thing it self tells us, that that Money could not be the motive of procuring his Majesty's favour, since the Lord *Raby* could with more ease obtain from his Majesty the Remission of that Mortgage, than a pardon for a Delinquent who had so great an Estate. Another instance of Corruption which they tell us of in this case, is that he also released to the Lord *Romney* all the Profits of his Estate which his Lordship had enjoyed near three years, amounting to about as many Thousand Pounds, in consideration his Lordship wou'd not give him any Molestation in passing his Patent. The Sum released they are mightily mistaken in, when they tell us 'twas about 3000 *l.* for 'twas not a third part of the money; but be that what it will, why is it mentioned among instances of money being given for restoring forfeiting Persons to their Estates? Had not the Lord *Romney* that Estate by Grant from his Majesty? Was there any reason then why he should be forced to pay the Lord *Bellem* the Profits of the Estate during the time he had it by the King's Grant?

The second Instance they give us is, of *John Kerdiff*, who gave to a certain Person 200 *l.* or thereabouts, to prevail with the Lord *Romney* to obtain his Majesty's Letter to have his Outlawry reversed. This Man's case they say *deserved Compassion*; if so, the Lord *Romney*, in procuring the Reversal of his Outlawry did not abuse his Majesty's Compassion. Such Instances as this are the others they mention of *John Morris*, *Harvey Morris*, and *Edmund Roch*. If they were not able to discover neither by the general Report of the Country, nor their own Observation (which we find has been mighty penetrating) nor the Oaths of Persons examined before them, that his Lordship had any part of those little Sums; 'twas hard that they should after such a manner insinuate that he had for *Gratifications* abused his Majesty's Compassion. One would hardly imagine that a Person of a noble Family, whose Ancestor was eleven times chief Governour of that Kingdom, and himself thought worthy of that great and honourable Trust, could be so treated by Gentlemen of that Country. An-

Another Instance is of Mr. *Hussey* of *Leislip*, who being informed by Mr. *Bray* and Mr. *Roscoe* Agents to the Lord *Athlone*, that he could not get his Outlawry reversed without giving a General Release of all demands to the Lord *Athlone*, did release a Mortgage of 3000 *l.* which he had on the Lord *Limerick's* Estate, then in Grant to the Lord *Athlone*, who appears not to us, say they, to know of the said Mortgage, or have had any benefit thereby.

If the Lord *Athlone* did not know of that Mortgage, and had no benefit by the Release, I don't understand how he could abuse the King's Compassion, or how this can be reckoned as an Instance of Pardons being obtained by money. But suppose the Lord *Athlone* had known of that Mortgage, and had told Mr. *Hussey* that he would oppose his Pardon till he released that Incumbrance on the Lord *Limerick's* Estate, I can't see how this could be a greater Crime in him, than accepting a Grant of the Estate of the Lord *Limerick*, since they were both Criminals. There was no necessity for his Lordship's contracting with *Hussey* to procure him his Majesty's Pardon in consideration of that Release, since 'twas easier for him to beg a Release of it from the King.

The last Instance they give us, in their Catalogue of these Corruptions, is the Case of the Lord *Bophin*, who, as they tell us, agreed to pay the Earl of *Albemarle* 7500 *l.* in consideration that he would procure his Majesty's Letter, to have him restored to his Estate and Blood. To secure this money by a Bill that was brought in, 'twas provided, say they, that 9000 *l.* should be raised on the said Estate, and the remainder, they believe, was to be paid to Persons concerned in negotiating the said Agreement.

If the matter of Fact was what I have been informed, it deserved quite another Representation than what the Commissioners give it.

The true Account of that affair is thus. Upon the forfeiture of the Lord *Bophin*, his Estate, to which he was only Tenant for Life, was by the King given to the Earl of *Albemarle*. The forfeiting Lord used all the endeavours he could to recover his Estate; and his great Plea was, that he was secured by the Articles of *Galway*. Afterwards not succeeding in this

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Claim, he petitioned the King and made Overtures to the Earl of *Albemarle*, about his quitting his Grant, and prevailing with his Majesty to have him restored. In order to bring him to the more easy compliance, he did not only mention great Incumbrances on the Estate, and represent (what was true) that he was only Tenant for life, but said that another (a) would set up a Title which would defeat the Grant. These considerations enclined the Earl of *Albemarle* to hearken to Proposals. That which the Lord *Bophin* offered in his Petition, to move his Majesty's *Royal Compassion*, was, that he would give up his Children to be bred Protestants; to the Earl of *Albemarle* for release of his Grant he offered 7500 l. which (as I have heard) was readily accepted, by reason of the other offer. The King, who was pleased with the thoughts of gaining that Branch of the noble Family of *Clanrickard* (and who had almost the whole Territory of that House left him) to the *Protestant Religion*, willingly embraced the Proposal: and pursuant to it two of the Lord *Bophin*'s Seven Sons were presently after sent to *Eaton* at his Majesty's charge, where they have continued ever since. But this was not all that wrought upon his Majesty's *Royal Compassion* in that matter; 'twas represented to him (as it is by the Commissioners in their Report, who had their hint from the account that was given then of the Transactions of that affair by the Persons they examined upon Oath) that if that Estate were set to *Protestant Tenants by Leases for Lives renewable for ever*, 'twould greatly increase the Freeholders, and thereby secure the Property, and advance the *Protestant Interest* of that Country. His Majesty was therefore desired that one of the Conditions on which the Lord *Bophin* should be restored, might be that he should suffer his Estate to be put into the Hands of Protestants in trust, who should set Leases for Lives renewable for ever to Protestant Tenants. This Proposal, made to secure the Protestant Interest in that *Irish* part of the Country, was assented to, tho not so very willingly by the Lord *Bophin*; two Thirds of whose Estate was thus to be leased out. To settle the whole matter

(a) The Earl of *Clanrickard*.

a Bill was prepared, in which (as the Report sets forth) 'twas provided that 9000 *£*. should be raised on the Estate. Of that Money the Earl of *Albemarle* was to have 7500 *£*. for releasing his Grant, the other 1500 *£*. was not (as the Report insinuates) to be paid to Persons concerned in negotiating that Agreement. When the Bill was under debate in the Council in *Ireland*, some Persons (as I have been informed) offered a Petition wherein, pursuant to Proclamations and publick Assurances given, they made a demand of the part due to them, as Discoverers of the Lord *Bophin's* Title: after some debate a thousand Pounds was nam'd and agreed on as a competent Sum; besides this 'twas proposed (I believe by the Lord *Galway* himself) that 500 *£*. more might be added to the above Sum, his reason for it was, that the Lord *Bophin* (who was Tenant for Life, and therefore not able to raise Money) might have wherewithal to defray the charge of the Bill, and to make him otherwise easy, who was necessarily at that time at a greater expence than his circumstances could bear. These were the real uses for which the 9000 *£*. mentioned in the Report was to be raised upon that Estate: In the Bill 'twas said to be for payment of Debts, but they were Debts contracted after the manner I have here mentioned.

It must be owned the Commissioners could not but hear Reports and Suggestions of faulty dealing in this Affair from the People of that Country, who were generally ignorant of the real Truth of that Transaction: Therefore they sifted the matter, and trac'd it as far as they could, and omitted no question that was proper to discover whether great and considerable men in the management of the Affairs of that Kingdom had in this Transaction acted a faulty and corrupt part or no. The Lord Ch——r of that Kingdom (who was examined several Hours by the Commissioners) and Mr. *Thomas Br——k*, in their Examinations upon Oath gave (as I have been informed) the same account which I have here delivered: Mr. *Daly* (commonly known by the name of Judge *Daly*) who was manager for the Lord *Bophin*, being strictly examined four Hours together upon Oath concerning the disposal of the Money, and the subject matter of the Bill, gave the same account; several questions were put to him, whether

Mr. Thomas Br ——— k or A. Br ——— k, were to have any part of the Money? Who solicited the Bill at the Privy Council? What did the Lord Chancellor or any other of the Privy Council say concerning it? How came the Lord Gal ——— y, Lord Ch ——— r, Mr. Thomas Br ——— k and Mr. A. Br ——— k to befriend the Bill? &c. His answers upon Oath were, that neither of them were to have one Groat directly or indirectly: that they were for it upon no other account, as he believed, than to bring the Children of the Lord Bophin (who were Seven Sons and Two Daughters) into the Protestant Church, and to plant his Estate with Protestants; that that which was then a *Catholick*, might be made a *Protestant Country*.

This was the substance of what that Gentleman discovered upon his Oath. I must indeed do the Commissioners the Justice to own that they did all that lay in their Power to discover whether there were any corrupt dealings among the Managers of that Affair; and so exact were they in discharging their Trust, that they told that Gentleman (as I have heard) that if he would discover they would recommend him ——— His answer was, that he was very *unfortunate*, if he were taken to be a Person who would be bribed.

Good Patriots will leave no Stone unturned to make a discovery, when it is suggested to them that great Men are corrupt: And if their Zeal should happen to carry them a little too far, their Intentions of serving the Publick, will perhaps to some seem a sufficient Justification of what they do. This is the excuse that is to be made for the too great concern shewn by Mr. A ——— y in that Examination. When the Lord Chancellor was declaring upon Oath what he knew of my Lord Bophin's Affair, he was very well pleased with the beginning of his Evidence, when he mentioned the Money to be given to the Lord *Albemarle*, &c. which he thought was a sufficient discovery of the Bribery; but afterwards when he proceeded to open the whole matter, and give an account of the Considerations, he spoke to Sir

R. L. and begg'd him to bid the Lord C——r hold his Tongue, for that he would spoil all that he had said before.

Things being thus, 'twill be wonder'd how the Bill should (as the Commissioners in their Report tell us) be rejected in the House of Commons in *Ireland*. The reason is very well known in that Country; besides that the House was at that time warm'd more than ordinary by the Struggles and Debates of opposite Factions, it must be own'd that they had receiv'd very ill Impressions concerning that Affair, which continue yet with a great many, who have not been informed of the full truth of the matter, as 'twas deliver'd upon Oath at the Commissioners Table. Besides these, there were some other Reasons for the rejecting that Bill, which need not here be mentioned.

This is the true Account of that *clandestine Bargain* (as 'tis called in the Report) which is the last Instance given by the Commissioners of *Outlaws* obtaining his Majesty's Favour by *Gratifications to persons who abus'd his Majesty's Royal Compassion*. The Report of this Affair might better be let alone, since the matters that were transacted deserv'd quite another Representation than is made in the Report. If he who resigns a very valuable Interest for a very small consideration of Money, out of regard to that great one of settling the *English* Interest in an *Irish* Territory, and gaining a great Family to the *Protestant* Communion, may be said to *abuse his Majesty's Royal Compassion*, 'twill be almost impossible for a great man to recommend any thing to the King, which may not be called an Abuse.

But I shall in this digression (as I know 'twill be call'd) run too far: I cou'd not avoid mentioning some of the Mistakes which the Commissioners ran into, when I considered, That 'twas the Report they made of the greatness both of the *Forfeitures*, and the Faults of those who were interested in them, that inclin'd the *Parliament* to pass that RESUMING BILL, which, besides other Inconveniencies of it, will be the occasion of turning out many thousand Protestant Families, and bringing the *Irish* into their Habitations.

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But 'twill be said, Why these Complaints against a Resumption now, since we are told by the Author on *Resumptions*, that there have been many in former days? To this Objection I shall give this general Answer, That a Resumption from a King (if I may use the Expression) is what was never heard of in this Nation before. All the *Resumptions* which that Author mentions before the Reign of *Henry* the Sixth, and more than he mentions, were Arbitrary Acts of the Kings themselves, who without the assistance of the *States* of the Kingdom, either to enrich themselves, or to give to great men whom they had occasion to court, or to carry on their Wars abroad, seized the Estates which they or their Predecessors had given away. Herein they acted as Princes always did in the beginning of the *Gothick* Governments, whilst the *Fiefs* were given only during pleasure. Tho such Resumptions as these make against our Author, yet don't we thank him for mentioning them, since they only serve to introduce an Arbitrary Power. The Resumptions afterwards in the Reigns of *HENRY* the Sixth, *EDWARD* the Fourth, and *HENRY* the Seventh, are less, if possible, to the purpose. They were either trifling, and such as were eluded by the many *Savings* put in by the Kings, of which kind were all the Resumptions but one in the Reign of *HENRY* the Sixth, and the three first in the Reign of *EDWARD* the Fourth; or they were to recover the Lands out of the hands of Usurpers and their Grantees. Such was the Act made in favour of *HENRY* the Sixth at *Westminster*, after that he got the better of *EDWARD* the Fourth, who had reigned ten years, and dispos'd of the Lands to his Followers. Such likewise was the Act of 13 *Edm.* 4. three years after, which vested in *EDWARD* the Fourth (who had now got the Ascendant again) all the Lands which *HENRY* the Sixth had given to his Followers (a): and of this sort was the Resumption in the first year of *HENRY* the Seventh, which vested in him

(a) Vid. *Tyrrel's History*. pag. 194.

all the Lands which his Uncle *HENRY* the Sixth had in the 34th year of his Reign. These were Acts to recover the Lands out of the hands of Usurpers, and are to no purpose mentioned, for they all prove strongly for the King. They don't only shew that there was nothing taken from him, but that 'twas the opinion of the States of this Land in those times, that they could not touch his *Prerogative*, since in every one of those Acts there is a *Saving* for it.

Things standing thus as I have represented them, I humbly am of opinion that it concerns the States of our Kingdom now assembled to consider whether it be not their Interest to review that Act, and to think of what may be proper for them to do when they have well considered all circumstances.

To direct their Consultations, and bring them to reasonable and just Resolutions in this matter, nothing more will be necessary than to weigh the Conveniencies and Inconveniencies of that Act; and if it should happen that the Conveniencies of it will not make amends for the Inconveniencies, the resolution afterwards will be very easy.

All the Conveniencies that I can see in it worth the taking notice of is, the Money we shall raise by it, which will be but a very poor and inconsiderable Sum.

The Inconveniencies of it to some may seem very great.

First, 'Tis to be considered whether the destroying our Constitution, under which we have lived for many Ages in great Wealth, Honour, and Prosperity, be not one. 'Tis likewise to be considered, whether our Constitution be not destroyed, first, by taking from the King that Right of *Prerogative*, which in all former Ages has been allowed. Secondly, By seizing mens Properties, which never was done before. If any think the Lords were under some constraint in passing that Bill, they

they may perhaps reckon that another Breach in our Constitution.

Secondly, 'Tis to be considered whether this Act, in affecting the King, may not affect the Publick, too sensibly. Some may think it more than probable, that to it we are to ascribe the Breach of that *Treaty of Partition*, which might not only have secured the Balance of *Europe*, but in time have brought that Power, which has been so much dreaded, to at least as low an ebb as we could desire. This I believe was foreseen, and therefore, perhaps, 'twas thought necessary to find *Instruments* to run down that *Treaty of Partition* in *England*, that we might be dispos'd to swallow that which must be a bitter Pill indeed.

This might be the design of a Book, which we heard was writ upon that Subject, and was to come into the world some time since: 'Twas thought fit to suppress that; but we may guess what it was, by that which has been lately published by a manifest Enemy to our State.

If this Bill was the great motive to that Resolution, if a Great *Monarch* would have given more for it at that time than I will pretend to name, only to give foreign *Princes*, and one particularly, a little *Idea* of the King of *Great Britain's* Power, this must needs lessen the value of it to us. But 'twill be said, all that is now over. No, things at this time are in that condition in the World, that we must either undertake a vigorous War in conjunction with other States, or give up all our Traffick abroad, and be under very ill Circumstances at home. If we are to ingage in a War, 'twill be necessary that we give all the demonstrations we can of Honour and Respect for the King, which we can do no way more successfully than by restoring what we have taken. Things may be so ordered, that much more Money may be rais'd than the Lands were worth before he granted them away; but if none were, we should be very far from being losers by it in the end.

Thirdly,

Thirdly, It may be reckoned another great Inconvenience in that Act, if it has any way serv'd the Interest of Popery.

The Reformed Religion is at this time under such dangerous circumstances, that I think we ought to be very cautious of giving Papists the least opportunity of boasting of our Favours. The use they make of it abroad is to make those of their Communion believe that their Cause has a considerable Interest in this Kingdom; and this in order to draw them into Confederacies against the Reformed Religion, and us particularly. Such Representations as these may have a very fatal influence in Protestant Countries, and make some run in the way we fear they are going. No one can imagine that I would insinuate that the Parliament of *England* design'd to shew any countenance to Papists, as such; they gave a very clear demonstration of a very opposite Temper the last Session. But altho they were very far from giving any Spirit or Countenance to Popery, yet Papists might abuse their Compassion, and from it take occasions of insulting.

'Twas, I think, great Clemency and Compassion in the King to restore some who had taken Arms against him, to their Estates and Blood (for the conquering Sword should not methinks spoil and ravage to the utmost extremity) and 'twas a compassionate Act in the Parliament to confirm the King's Charter of Mercy to those Outlaws: But that which was craftily publish'd abroad for the advantage of Popery, was, that Papists had interest enough in *England* to secure in Parliament the Grants which the King made to outlaw'd Papists, to the value (according to the Commissioners return) of 260863 *l. 7. s. 3 d.* when the Grants of all the great men who serv'd his Majesty were resum'd, when Protestant Purchasers could not obtain the favour to be allow'd any more than one third of 63000 *l.* Purchase Money, and no regard was had to Tenants and Improvers.

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That such a Representation as this might be prejudicial to the Protestant Interest abroad, was, I believe, foreseen by some who in the beginning minded the drawing of the Bill ; therefore in the first draught care was taken (as I have heard) to include those Estates of restor'd Rebels with the Grants of Protestant Noblemen ; how they were left out afterwards it concerns not me to enquire.

Fourthly, Some will reckon the ill Blood that has been created in the People of that Kingdom another considerable Inconvenience of that Act. That there is a general dissatisfaction among the Protestants there by reason of the execution of it, is what we are assur'd from all hands. Some I know will ask, Why should we be mov'd at this, since their Resentment is not able to hurt us ? Tho it be not in their power, nor, I hope, in their Inclinations, considering what Obligations we have laid upon them in delivering them out of the hands of their Enemies, to withdraw themselves from our obedience ; yet must we reckon it our interest, when we consider things thoroughly, to treat them with kindness. All wise States have made it their care to keep the Kingdoms that were in subjection to them and their Colonies in good humour : And it seems to me to be our interest to treat them so, that we may be secure of their hearts and hands ; that we may find their Obedience cheerful, and their Compliance ready, whenever we have occasion for that assistance which they are able to give us. They who despise their Resentments at this time, don't sufficiently consider human nature, nor the course of our Passions : When the Spirits of a People are once thoroughly sour'd, when the Resentment pierces deep, there is a danger of its being transmitted to posterity, and it may have no good effects hereafter in other circumstances of our Commonwealth.

When I represent this as an inconvenience, I must ask the Pardon of Men of other Sentiments. If there be any who are projecting for another *Revolution*, they must think that nothing can be more their business, than to raise Feuds and Animo-

mosities, and divide us among our selves. They never will fail of taking effect, when what they propose carries an appearance of advantage to the Publick; 'tis not I think, the business of wise and good Men, who love the Happiness and Tranquillity of their Country, and are for supporting the present Government, to humour Men of these designs; to hurt People who have ruined their Fortunes and hazarded their Lives in our Service, to please them who think they can't make themselves happy otherwise than by ruining us.

These Measures are very differing from those which have been taken by the wisest and best of our Ancestors. 'Twas always their care in those Reigns wherein the publick good was most regarded, to give all possible Incouragement in that Kingdom to the *English*, who hazarded their Lives to subdue the Rebels there, and keep the Country in Subjection to the Crown of *England*.

It must indeed be owned that his Majesty, whilst those Lands were in his Hands, gave strict orders that they should be let only to Protestant Tenants; the same care was afterwards taken by his Majesty's Grantees in selling as well as settling their Estates. 'Tis a great misfortune that, was so; for had not such Provision been made for securing the Protestant Interest in that Kingdom, its Security had been abundantly better established than now it is: The *Irish* had then born a part of the Calamity; and so many thousand Protestants who fought for the Crown of *England*, and by their great Services lessened the charge we should have been at in reducing that Kingdom, had not been ruined by having the Bounty of their Prince, their legal Purchases, and the Fruits of their labour seized to defray the charge of the War.

Tho it may be the Desire and Interest of some People to have those treated as *Rebels* (as too many reckon them to be) who were active in subduing the *Irish*, and reducing them to their just obedience to the Crown of *England*, 'tis impossible but an *English* Parliament must have other Sentiments, when they set themselves seriously to consider their true and real Interest. If their Services will not procure them so much favour, as to be restored to what they purchased and improved, to which they had as good a Title as any man in these Kingdoms.

doms has to his Estate, their Calamity will carry a Symptom with it, which to them who love the Protestant Interest and our present Settlement, must cause a much greater concern than what arises from the suffering it self.

If when their Rights are secured to these Protestant Purchasers, Tenants and Improvers (which certainly will be in an *English* Protestant Parliament) and the several Claimants have reaped the full benefit of their Claims, the produce of the *resuming Act* will be but very little more than the advantage which will accrue to the *Irish Commissioners* and *Trustees*, and the pleasure and satisfaction which our Enemies will have in seeing the King's Grants resumed after a manner unknown in this Land before, and the Rewards of their Services taken from those great Men, who followed his Fortune, and were Instruments in the hand of God to deliver us from Popery and Slavery that were just breaking in upon us; 'tis hoped that the Wisdom and Justice of this Nation will not think it their Interest to adhere to what they have been led into by the false Suggestions of men who have had more regard to their private Gain, than the Glory and true Interest of *England*. If after the *Trustees* have spent three Years Rents of those Forfeitures in the Execution of that *Trust*, and the Claimants have been at a hundred thousand Pounds charge in their Journeys from their respective Countries to *Dublin*, and prosecuting their Claims, and the whole Kingdom has for that course of time been disquieted with the Jurisdiction of twelve arbitrary men, all that *England* will gain by it will be no more than the little Sum abovementioned, it can hardly be doubted but that all those who love our Constitution, are for supporting the present Government, and have a regard to what is truly honourable and just, will restore to the several Persons concerned what by the settled Laws of this Land belonged to them; or at least will receive such Proposals, as shall be made for raising a Sum that may seem reasonable to *England*, and will be rais'd with less Prejudice and Dissatisfaction to the People of *Ireland*.

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